# A COLLECTION OF STATUTES

CONNECTED WITH THE

GENERAL ADMINISTRATION OF THE LAW,

*ARRANGED*

ACCORDING TO

THE ORDER OF SUBJECTS,

WITH NOTES,

BY

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# PART IV. CLASS IV.

## OUTLAWRY.*

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### No. 1.

### 5 Edward III. c. 12. — What is requisite to be done to have their Pardons allowed which be outlawed.

*Ex Rot. in Turr.* Lond.

AUXINT est accorde & establi qen cas ou le pleintif recovre damages & a la seute le Roi celui devers qi les damages sont rcoveriz seit utlage qe nulle chartre de pardoun soit grante de cele utlagarie si le Chaunceller ne soit appris qe grec soit fait a meisme le pleintif des damages. Et en cas ou homme soit utlage par proces devant ce qil apierge qe nulle tiele chartre soit grante si le Chaunceller ne soit appris qe tiel utlage se eit renduz a la prisone devant les Justices en place dont le bref dexigend issist cest assaver si de la place le Roi que adonqes il se rende en meisme la place & si du commune Baunk adonqes se rend illoeqes et si des Justiçes assignez doier & terminer seantz meismes les Justiçes se rend devant eux & sils soient levez adonqes se rend en la place le Roi devant les Justices & devant eux soit fait venir le

No. 1. 5 Edward III c. 12.

Pardon of him that is outlawed upon a Judgment.

'ITEM it is established and 'ordained, That in case 'where the Plaintiff shall 'recover Damages, and he 'against whom the Damages 'be recovered be outlawed at 'the King's Suit, that no Char-'ter of Pardon shall be granted 'of his Outlawry, except the 'Chancellor be certified that 'the Plaintiff is satisfied of his 'Damages. And in case that 'a Man be outlawed by Pro-'cess before his Appearance, 'no such Charter shall be 'granted, except the Chan-'cellor be certified that such 'Person outlawed hath yielded 'himself to Prison before the 'Justices of the Place, from 'whence the Writ of Exigent 'issued; that is to say, if from 'the King's Bench, then he 'shall yield him in the same 'Place; and if from the Com-'mon Bench, then he shall 'yield himself there; and if 'from the Justices of *Oyer* '*Terminer*, whiles the same

Outlawry upon an Original before Appearance.

*Ex Rot. in Turr.* Lond.

No. 1. 5 Edward III. c. 12.

A Scire facias awarded against the Plaintiff.

'Justices do sit, he shall yield him before them; and if they be risen, then he shall yield him in the King's Bench, before the Justices, and the Record with the Process shall be removed before them by Writ. And the said Justices before whom they shall so yield them, shall cause the Party Plaintiff to be warned to appear before them at a certain Day, at which Day if the Warning be duly witnessed, and the Plaintiff appear upon his Warning, then they shall plead upon the first original Writ, as though no Outlawry had been pronounced; and if the Plaintiff come not, he that is outlawed shall be delivered by virtue of his Charter. And it is to be understood, that all such Charters be of the Grace of the King, as before they have been.'

record & proces par bref. Et les Justices susditz devant queux ils serront issint renduz facent garnir la partie pleintif destre a certein jour devant eux a quel jour si le garnissement soit duement tesmoigne adonqes pledent sur le primer bref original auxicome nulle utlagarie neust este pronouncie si le pleintif viegne au garnissement et sil ne viegne mie soit lutlage delivers par vertue de sa chartre. Et est a entendre qe totes tieles chartres sont de la grace le Roi come avant ont este.

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## No. 2.

5 Edward III. c. 13. — What is requisite where any Person will avoid an Outlawry by Imprisonment.

No. 2. 5 Edward III. c. 13.

"ITEM, Because divers People being duly outlawed, have avoided the Outlawries pronounced against them, by reason of Imprisonments untruly testified by Sheriffs and others which have no Record;" 'it is enacted, That if any from henceforth will defeat any Outlawry pronounced upon him by such Testimony, that he shall yield himself to the Prison, and then the Justices of the King's Bench shall cause the Party at whose Suit the Outlawry was pronoun-

ITEM pur ce qe moltz de gentz duement utlagez ont deffait les utlageries pronounciez sur eux par cause denprisonment tesmoigne nient veritablement par viscountes & autres qi nont pas record si est accorde & establi qe si nul desore enavant voille defaire lutlagerie pronouncie sur lui par tiele tesmoignance qil se rend a la prisone & adonqes les Justices du Baunk le Roi facent garnir la partie a qi seute lutlagerie estoit pronuncie destre devant eux a certein jour a queu jour si la partie voille

*Ex Rot. in Turr.* Lond.

averrer qe la tesmoignance ne soit pas veritable soit resceu a laverrement. En mesme la manere soit le Serjant le Roi ou son attourne out autre qi voudra suer pur le Roi resceu a lavarrement contre tiele tesmoignance en cas ou lutlagerie soit pronuncie a la seute le Roi.

'ced, to be warned to be before them at a certain Day; at which Day, if the Party will verify that the Testimony is untrue, his Averment shall be received. And in like Manner the King's Serjeant, or his Attorney, or other that will sue for the King, shall be received to have the same Averment against such Testimony, in case where such Outlawry is pronounced at the King's Suit.'

No. 2. 5 Edward III. c. 13.

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## No. 3.

25 Edward III. st. 5, c. 17. — Process of Exigent shall be awarded in Debt, Detinue, and Replevin.

ENSEMENT accorde est & assentue qe autiele proces soit feit en brief de dette deteneu des chateux & en prises des avers par brief de Capias & par proces dexigend par retourn de viscount sicome est usee en brief dacompt.

'ITEM it is accorded, That such Process shall be made in a Writ of Debt and Detinue of Chattles, and taking of Beasts, by Writ of *Capias*, and by Process of Exigend by the Sheriff's Return, as is used in a Writ of Accompt.'

No. 3. 25 Edward III st. 5, c. 17.

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## No. 4.

Henry IV. c. 18. — Process against one of the County of *Chester* which committeth an Offence in another Shire.

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## No. 5.

7 Henry IV. c. 13. —Impotent Persons that be outlawed may make Attorneys.

ITEM pur ceo qe plusours des lieges du Roi sont utlages & plusours waiviez par proces erroine du loye & sont si impotentz de leurs corps par diverses maladies & infirmitees qils ne purront en leurs propres

"ITEM, Whereas many of the King's liege People be outlawed, and many waved, by erroneous Process in Law, and be so impotent in their Bodies, by divers Maladies and Infirmities,

No. 5. 7 Henry IV. c. 13.

No. 5. 7 Henry IV. c. 13.

" that they cannot come in " their proper Persons before " the King in his Bench, there " to make their Suit to reverse " such erroneous Process ;" ' it is ordained and established, ' That every Justice of the one ' Bench and of the other, and ' also the chief Baron of the ' Exchequer, shall have Power ' to examine the same Persons, ' having such Malady and ' Diseases openly known, and ' thereupon may the same Jus- ' tices and Baron, and every ' of them, by their Discretion, ' record their Attorney in this ' Case. Provided always, That ' in the Writ of *Capias ad satisfaciendum* the common ' law shall hold Place.'

Capias ad satisfaciendum.

*Ex Rot. in Turr.* Lond.

persones venir devaunt le Roi en son Banc illoeqes affaire leur seute pur tiel proces erroine reverser Ordeignez est & establiz qe chescun Justice de lun Banc & de lautre & auxi le Chief Baron de Lescheqer ait poair dexaminer ycelles persones aiants tiels maladies & infirmitees overtment conuz & sur ce purront mesmes les Justices & Baron & chescun de eux par lours discretions recorder attourne en cest cas. Pourveux toutesfoitz qen le breve de capias ad satisfaciend' courge la commune ley.

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## No. 6.

### 1 Henry V. c. 5.—In which Original Writs Additions of the Defendants Names shall be put.

No. 6. 1 Henry V. c. 5.

' ITEM it is ordained and established, That in every ' original Writ of Actions Per- ' sonals, Appeals, and Indict- ' ments, and in which the ' Exigent shall be awarded, in ' the Names of the Defendants ' in such Writs Original, Ap- ' peals and Indictments, Ad- ' ditions shall be made of their ' Estate or Degree, or Mystery, ' and of the Towns, or Ham- ' lets, or Places, and Counties, ' of the which they were, or ' be, or in which they be or ' were conversant ; and if by ' Process upon the said Original ' Writs, Appeals, or Indict- ' ments, in the which the said ' Addition be omitted, any ' Utlagaries be pronounced, ' that they be void, frustrate, ' and holden for none; and

ITEM ordeignez est & establiz qen chescun brief original des actions personelx & appellez & enditementz en queux exigend' serra agardez qa les nouns des defendauntz en tieux briefs originalx appellez & enditementz soient faitz additions de lour estat ou degree ou d[illegible]istere & les villes ou hamelles ou lieux & les countees des queux ils furent ou sount ou en queux ils sont ou serront conversauntz. Et si par processe sur les ditz briefs originalx appelles ou enditementz en queux les ditz additions soient entrelessez aucunes utlagariez soient pronunciez qils soient voidez irritez & tenuz pur null & qe avaunt les utlagariez pronunciez les ditz briefs & endite-

mentes soient abatuz par exception du partie par la ou en icelles les ditz additions soient enterlessez. Purveux toutfoitz qe mesqe les dites briefs dactions personelx ne soient accordauntz as recordes ou faits par la superplusage des additions suisditz qe pour celle cause ils ne soient abatuz Et qe les clerks de la Chauncellarie south qi noms tiels briefs isserount escriptz ne enterlessent ne facent omission des ditz additions come dessuis est dit sur peyne destre puniz affairē fyn a Roi par discretion de Chanceller. Et comencera ceste ordinance a tenir lieu a seute de partie de la fest de Seint Michel proschein enavaunt.

'that before the Utlagaries 'pronounced, the said Writs 'and Indictments shall be 'abated by the Exception of 'the Party, where in the same 'the said Additions be omitted. 'Provided always, That though 'the said Writs of Additions 'Personals be not according to 'the Records and Deeds, by 'the Surplusage of the Addi-'tions aforesaid, that for that 'Cause they be not abated; and 'that the Clerks of the Chan-'cery, under whose Names 'such Writs shall go forth 'written, shall not leave out, 'or make Omission of the said 'Additions as is afore said, 'upon Pain to be punished, 'and to make a Fine to the 'King, by the Discretion of 'the Chancellor. And this 'Ordinance shall begin to 'hold Place at the Suit of 'the Party, from the Feast of 'St. *Michael* next ensuing for-'ward.'

No. 6. 1 Henry V. c. 5.

Surplusage of Additions shall not prejudice.

## No. 7.

### 19 Henry VII. c. 9. — Process in Actions upon the Case sued in the King's Bench and Common Pleas.

[Inserted ante. Class III. No. 11.]

## No. 8.

### 6 Henry VIII. c. 4.—An Act for Proclamations to be made before the Exigents be awarded in foreign Shires.

'WHERE at a Parliament holden at *Westminster* the fourth 'Day of *February*, in the third Year of the Reign of 'our Sovereign Lord King *Henry* the Eighth that now is, and 'from thence (for divers urgent Causes) unto the fourth Day of '*November*, the fourth Year of the Reign of our said Sovereign 'Lord, prorogued, one good and reasonable Act was made 'and ordained, touching Writs of Proclamation to be made 'upon Exigents sued against any Person in foreign or other 'Shire, than where such Defendant be called of; only to

No. 8. 6 Henry VIII. c. 4.

4 H. 8. c. 4.

No. 8.
6 Henry VIII. c. 4.

'endure from thence unto the next Parliament; which Act is 'now determined, the Effect and true Intent of which said Act 'is thought right, available, and commodious, and in avoiding 'of Outlawries hereafter to be pronounced against any Per-'son by reason of such foreign Suits, to have Continuance, 'and perpetually to endure:' Be it therefore, by the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same Parliament, enacted, ordained, and established, That if and where any Writ of Exigent, at any Time from the fifteenth Day of *Easter* next coming, or after, shall be awarded at the Suit of our Sovereign Lord the King, or any other Person or Persons, Plaintiff or Plaintiffs, in any Action personal, against any Person or Persons called of any Shire or City, being a Shire-corporate of itself, or else late of any such Shire or City, other than into such Shire or City whereinto such Exigent shall be awarded, to be called according to the Law; and also in every Writ of Exigent in any Action personal, whereof the Process or Exigent at the said fifteenth Day of *Easter*, or after, shall be directed into *London* or *Middlesex*, the Defendant being called late of *London*, or late of *Middlesex*, and at the Time of the Exigent awarded not dwelling in *London*, nor in *Middlesex*, or else that the said Defendant or Defendants in the same Exigent dwell in any other Shire or Place than where the King's Writ runneth; then the Justices before whom any such Exigent is to be awarded, in all Actions where the Exigent shall not be directed into *London* nor *Middlesex*, to award a Writ of Proclamation to be directed to the Sheriff of the same County, where it doth appear by the using of such Action, that the Party Defendant is or lately was dwelling, if the King's Writ there be current, and else to the next Shire adjoining to the County or Counties, or other Places, whereof the Party is called, or lately supposed by the said Exigent to have his Being of, where the King's Writ so runneth not. And in every Action as aforesaid, whereof the Exigent shall be directed into *London* or *Middlesex*, and the Defendant or Defendants in the same called late of *London* or of *Middlesex*, and at Time of the Exigent awarded, not having his or their Dwelling in *London* or *Middlesex*, then the Writ of Proclamation to be awarded, made, and directed unto the Sheriff of the Shire where the Defendant at the Time of the Exigent so against him or them awarded shall have his dwelling, or, in case where the King's Writ runneth not, unto the next Shire thereunto adjoining; the which said Writ of Proclamation shall contain the Effect of the same Action, and that the Sheriff of the County, to whom any such Writ of Proclamation shall be directed, shall make three Proclamations within his County at three several Days, that is to say, Two of the same Proclamations in the full and plain Shire-Court of the same County, and the Third of the said Proclamations to be made at the General Sessions in those Parts, where the Party Defendant is supposed to be dwelling,

Proclamation awarded in a foreign County than where the Defendant is sued.

Proclamations where the Party is dwelling in a County Palatine.

Three Proclamations.

For Proclamations in Counties Palatine, see 1 Ed. 6. c. 10. s. 2, and

or in the Parts of the County next adjoining to the County or Counties where the King's Writ runneth not, that the Party Defendant yield himself to the Sheriff of the foreign County, to whom any such Exigent in any Act personal is awarded; so that the Sheriff of such foreign County may upon his yielding have the Body of the said Defendant before the Justices, before whom any such Exigent is awarded, at the Day in the same Exigent comprised, there to answer to the Plaintiff in the same according to the Law.

No. 8. 6 Henry VIII. c. 4. 5 & 6 Ed. 6. c. 26. s. 2.

II. And that every such Writ of Proclamation shall have the same Day of Return as the Writ of Exigent upon such foreign Action so awarded shall have: And that every such Writ of Proclamation be delivered of Record to the Sheriff or Deputy of the County, into the which any such Writ of Proclamation is to be awarded; and that the Sheriff of the same County duly do execute the same, and thereof make true Return at the Day of the same Writ appointed, upon Pain to forfeit such Amerciament unto the King our Sovereign Lord, and to his Heirs, as by the Discretion of the Justices, before whom such Exigent shall be returnable, shall be set.

The Proclamation shall be delivered to the Sheriff of Record.

III. And that the Officer, in whose Office such Exigent is taken, make out the said Writ and Writs of Proclamation, as hereafter shall be awarded in any of the said Courts.

The Officer's Fee for making of Proclamation.

IV. And that the same Officer take no more for the making of any such Writ of Proclamation, and the entering of the same of Record, but only *vi. d.*

V. And if any Outlawry hereafter be had or promulged against any Person or Persons in any Action personal in any foreign County, and no Writ of Proclamation (as is aforesaid) awarded and returned, that then every such Outlawry to be utterly void and of no Effect ne Force in the Law; and that all Outlawries had contrary to this Act be avoided by Averment, without suing of any Writ of Error.

An Outlawry avoided without Writ of Error.

## No. 9.

5 and 6 Edward VI. c. 26.—An Act for Writs of Proclamation upon *Exigend*, to be current in the County Palatine of *Lancaster*.

## No. 10.

31 Elizabeth, c. 3.—An Act for the avoiding of privy and secret Outlawries of the Queen's Subjects.

No. 10. 31 Elizabeth, c. 3.

'FOR the avoiding of secret Outlawries in Actions Personal 'against the Queen's Subjects, having known Places of 'their Dwellings, by reason that Proclamations are made 'in the County Courts and in Quarter-Sessions, which are

No. 10.
31 Elizabeth, c. 3.

Three Proclamations shall be made in every Action Personal, wherein any Writ of Exigent shall be awarded, &c.

'Places remote from their Dwellings, and thereby they have 'not any convenient Notice of such Suits against them:' Be it enacted and ordained by the Authority of this present Parliament, That in every Action Personal wherein any Writ of Exigent shall be awarded out of any Court, in or after the Term of *Easter* next coming, one Writ of Proclamation shall be awarded and made out of the same Court, having Day of *Teste* and Return as the said Writ of Exigent shall have, directed and delivered of Record to the Sheriff of the County where the Defendant at the Time of the Exigent so awarded shall be dwelling, which Writ of Proclamation shall contain the Effect of the same Action: And that the Sheriff of the County unto whom any such Writ of Proclamation shall be directed, shall make three Proclamations in this Form following, and not otherwise; that is to say, one of the same Proclamations in the open County-Court, and one other of the same Proclamations to be made at the General Quarter-Sessions of the Peace, in those Parts where the Party Defendant at the Time of the Exigent awarded shall be dwelling, and one other of the same Proclamations to be made one Month at the least before the *Quinto exact.* by Virtue of the said Writ of Exigent, at or near to the most usual Door of the Church or Chapel of that Town or Parish where the Defendant shall be dwelling at the Time of the said Exigent so awarded; and if the Defendant shall be dwelling out of any Parish, then in such Place as aforesaid of the Parish, in the same County, and next adjoining to the Place of the Defendant's Dwelling; and upon a *Sunday*, immediately after Divine Service and Sermon, if any Sermon there be; and if no Sermon there be, then forthwith after Divine Service: And that all Outlawries had and pronounced after the End of the next *Easter* Term, and no Writs of Proclamation awarded and returned according to the Form of this Statute shall be utterly void and of none Effect; and that the Officer in whose Office such Writs of Exigent and Proclamation shall be made, shall and may take such Fees as by the Statute made in the sixth Year of the Reign of the late King of famous Memory, King *Henry* the Eighth, is limited and appointed in that Behalf, and no greater Fees in any wise; and that the Sheriff for making of the Proclamation at or near to the Church or Chapel-door as is aforesaid, shall have twelve Pence. (1.)

The Officer's Fee for the making of the Writ of Proclamation by the Stat. of 6 H. 8. c. 4.

The Sheriff's Fee for making the Proclamation at the Church-door.

A Proclamation shall be of the Summons in a real Action at the Church-door.

II. And for the Avoiding of secret Summons in real Actions, without convenient Notice of the Tenants of the Freehold, Be it also ordained and enacted by the Authority of this present Parliament, That after every Summons upon the Land in any Real Action, fourteen Days at the least before the Day of the Return thereof, Proclamations of the Summons

(1.) These Provisions are adopted by the Irish Statute, 12 and 13 Jac. I. c. 8, which imposes a Penalty upon Attornies issuing a Writ of Exigent without a Writ of Proclamation; and by St. 6 Ann, c. 15, Ir., an Affidavit must be made and filed of the Proclamations' having taken place: vi. 2 Gabb. 194.

shall be made on a *Sunday* in Form aforesaid, at or near to the most usual Door of the Churches or Chapel of that Town or Parish, where the Land whereupon the Summons was made doth lie, and that Proclamation so made as aforesaid, shall be returned, together with the Names of the Summoners: And if such Summons shall not be proclaimed and returned according to the Tenor and Meaning of this Act, then no *Grand Cape* to be awarded but *Alias* and *Pluries* Summons, as the Cause shall require, until a Summons and Proclamation shall be duly made and returned according to the Tenor and Meaning of this Act. No. 12. 31 Elizabeth, c. 3.

III. And be it further enacted, That before any Allowance of any Writ of Error, or reversing of any Outlawry be had by Plea or otherwise, through or by want of any Proclamation to be had or made according to the Form of this Statute, after the End of *Easter* Term next, the Defendant and Defendants in the original Action shall put in Bail, not only to appear and answer to the Plaintiff in the former Suit, in a new Action to be commenced by the said Plaintiff for the Cause mentioned in the first Action, (2.) but also to satisfy the Condemnation, if the Plaintiff shall begin his Suit, before the End of two Terms next after the allowing the Writ of Error, or otherwise avoiding of the said Outlawry.

The Defendant upon a Writ of Error sued shall be bound to answer the Plaintiff, and to satisfy the Condemnation.

(2.) A Defendant appearing *in person* to reverse an Outlawry for a Defect at Common Law, (as the being beyond Sea) is only bound to find Bail in common Form to pay the Condemnation Money, or render the Principal; Havelock *v.* Geddes, 12.

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## No. 11.

### 31 Elizabeth, c. 9.—An Act for Writs upon Proclamations and *Exigents* to be current within the County Palatine of *Durham*.

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## No. 12.

### 4 and 5 William and Mary, c. 18.—An Act to prevent malicious Informations in the Court of *King's Bench*, and for the more easy Reversal of Outlawries in the same Court.

'WHEREAS divers malicious and contentious Persons 'have more of late than in Times past procured to be 'exhibited and prosecuted, Informations in their Majesties 'Court of *King's Bench* at *Westminster*, against Persons in all 'the Counties of *England*, for Trespasses, Batteries, and other 'Misdemeanors, and after the Parties so informed against have 'appeared to such Informations, and pleaded to Issue, the 'Informers do very seldom proceed any further, whereby the 'Persons so informed against are put to great Charges in their 'Defence; and although at the Trials of such Informations

No. 12. 4 & 5 William & Mary, c. 18.

No. 12.
4 & 5 William & Mary, c. 18.

'Verdicts are given for them, or a *Noli prosequi* be entered 'against them, they have no Remedy for obtaining Costs 'against such Informers: And whereas divers Persons are pro-'secuted in the said Court of *King's Bench* to Outlawries for 'Debts, Trespasses, and other Misdemeanors, and there is no 'reversing such Outlawries but by the personal Appearance of 'the Persons outlawed, so that the Persons arrested upon such 'Outlawries (if poor) lie in Prison till their Deaths, but if 'able, it costs them very dear to reverse the same Outlawries:' For Remedy whereof,

Clerk of the Crown to exhibit no Information, except by Order of Court, nor issue Process till Prosecutor has given Recognizance, &c.

II. Be it enacted by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this Parliament assembled, and by the Authority of the same, That from and after the first Day of *Easter* Term, which shall be in the Year of our Lord one thousand six hundred ninety and three, the Clerk of the Crown in the said Court of *King's Bench* for the Time being shall not, without express Order to be given by the said Court in open Court, exhibit, receive, or file any Information for any of the Causes aforesaid, or issue out any Process thereupon, before he shall have taken or shall have delivered to him a Recognizance from the Person or Persons procuring such Information to be exhibited, with the Place of his, her, or their Abode, Title, or Profession, to be entered, to the Person or Persons against whom such Information or Informations is or are to be exhibited, in the Penalty of twenty Pounds, (1.) that he, she, or they, will effectually prosecute such Informations or Information, and abide by and observe such Orders as the said Court shall direct, which Recognizance the said Clerk of the Crown, and also every Justice of the Peace of any County, City, Franchise, or Town Corporate (where the Cause of any such Information shall arise) are hereby impowered to take; after the taking whereof by the said Clerk of the Crown, or the Receipt thereof from any Justice of the Peace, the said Clerk of the Crown shall make an Entry thereof upon Record, and shall file a Memorandum thereof in some public Place in his Office, that all Persons may resort thereunto without Fee; and in case any Person or Persons against whom any Information or Informations for the Causes aforesaid, or any of them, shall be exhibited, shall appear thereunto, and plead to Issue, and that the Prosecutor or Prosecutors of such Information or Informations shall not at his and their own proper Costs and Charges, within one whole Year next after Issue joined therein, procure the same to be tried; or if upon such Trial a Verdict pass for the Defendant or Defendants, or in case the said Informer or Informers procure a *Noli prosequi* to be entered; then in any of the said Cases the said Court of *King's Bench* is hereby authorized to award to the said Defendant and Defendants, his, her, or their Costs, unless

Memorandum to be filed.

Defendant shall have Costs, &c.

(1.) The Prosecutor is only liable for Costs to the Amount of the Recognizance; R. *v.* Fleetwood, 2 T. R. 145; and the Court refused to require a Security for more; R. *v.* Brooke, id. 190.

the Judge before whom such Information shall be tried, shall, at the Trial of such Information, in open Court, certify upon Record, that there was a reasonable Cause for exhibiting such Information; and in case the said Informer or Informers shall not within three Months next after the said Costs taxed, and Demand made thereof, pay to the said Defendant or Defendants the said Costs, then the said Defendant and Defendants shall have the Benefit of the said Recognizance, to compel them thereunto.

No. 12. 4 & 5 William & Mary, c. 18.

Remedy for Costs.

III. And for the more easy and speedy reversing of Outlawries in the said Court, be it enacted by the Authority aforesaid, That from and after the said first Day of *Easter* Term, no Person or Persons whatsoever, who are or shall be outlawed in the said Court for any Cause, Matter, or Thing whatsoever (Treason and Felony only excepted) shall be compelled to come in Person into, or appear in Person in the said Court to reverse such Outlawry, but shall or may appear by Attorney, and reverse the same without Bail, in all Cases, except where special Bail shall be ordered by the said Court. (2)

Outlawry may be reversed by Attorney, except, &c.

IV. And be it further enacted by the Authority aforesaid, That if any Person or Persons outlawed, or hereafter to be outlawed, in the said Court (other than for Treason and Felony) shall, from and after the said first Day of *Easter* Term, be taken and arrested upon any *Capias Utlagatum* out of the said Court, it shall and may be lawful to and for the Sheriff or Sheriffs who hath or shall have taken and arrested such Person and Persons (in all Cases where special Bail is not required by the said Court) to take an Attorney's Engagement under his Hand to appear for the said Defendant or Defendants, and to reverse the said Outlawries, and thereupon to discharge the said Defendant and Defendants from such Arrests: And in those Cases where special Bail is required by the said Court, the said Sheriff or Sheriffs shall and may take Security of the said Defendant or Defendants by Bond, with one or more sufficient Surety or Sureties, in the Penalty of Double the Sum for which special Bail is required, and no more, for his, her, or their Appearance by Attorney in the said Court at the Return of the said Writ, and to do and perform such Things as shall be required by the said Court, and after such Bond taken, to discharge the said Defendant and Defendants from the said Arrests. (3.)

Persons taken upon Capias, &c. discharged.

(2.) This Clause clearly does not extend to Persons convicted of Misdemeanors. Qy. If it extends to criminal Misdemeanors at all; or whether the Word Misdemeanor, in the second Branch of the Preamble, is not confined to Writs of Conspiracy, &c. The Act does not make a Defendant bailable even in Civil Actions, who was not bailable before the Outlawry; e. g. after Judgment; Rex *v.* Wilkes, 4 Burn, 2540.

(3.) An Attachment will be granted against the Sheriff who discharged the Defendant without taking Bond, although the original Writ is not marked as bailable; Cracroft *v.* Gledowe, 3 Bur. 1482. The Court requires the Defendant to put in Bail to a new Action, plead within a limited Time, put the Plaintiff in the same Condition, &c. The Courts, upon Affidavit of Debt, require special Bail, to pay the Condemnation Money, and not in the alternative, to pay, or render the Defendant; Serecold *v.* Hampson, 2 Str. 1178;

No. 12.
4 & 5 William & Mary, c. 18.

Security after Return of the Writ.

V. And be it further enacted by the Authority aforesaid, That if any Person or Persons outlawed as aforesaid, and taken and arrested upon a *Capias Utlagatum*, shall not be able within the Return of the said Writ to give Security as aforesaid, in Cases where special Bail is required, so as he or they are committed to Gaol for Default thereof, that whensoever the said Prisoner or Prisoners shall find sufficient Security to the Sheriff or Sheriffs, in whose Custody he or they shall be, for his or their Appearance by Attorney in the said Court, at some Return in the Term then next following, to reverse the said Outlawry or Outlawries, and to do and perform such other Thing and Things as shall be required by the said Court, it shall and may be lawful to and for the said Sheriff and Sheriffs, after such Security taken, to discharge and set at Liberty the said Prisoner and Prisoners for the same; any Law or Usage to the contrary notwithstanding.

Extends only to Informations by Master of Crown Office.

VI. Provided, That nothing in this Act relating to Informations shall extend or be construed to extend to any other Informations, than such as are or shall be exhibited in the Name of their Majesties' Coroner or Attorney in the Court of *King's Bench* for the Time being (commonly called the *Master of the Crown Office)*, any Thing in the said Act contained to the contrary notwithstanding.

Defendants need not plead again upon the King's Demise.

VII. And be it further enacted by the Authority aforesaid, That upon the Demise of any King or Queen of this Realm, all Pleas to Informations in the said Court shall stand and be good in Law, without calling Defendants to plead again to the same, unless the Defendants desire so to do, and make Request to the said Court for that Purpose within five Months next after such Demise; any Law or Usage to the contrary notwithstanding.

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1 Wils. 3; and more fully, 12 East, 624 n.: which Affidavit need not be made before the Outlawry; ibid. It is otherwise where the Defendant appears *in person*, to reverse an Outlawry for a Defect at Common Law; see Note to the preceding Number.

# PART IV. CLASS V.

## PROCEEDINGS AGAINST PERSONS HAVING PRIVILEGE OF PARLIAMENT.

### No. 1.

10 George III. c. 50.—An Act for the further preventing Delays of Justice by reason of Privilege of Parliament.

No. 1. 10 George III. c. 50.

'WHEREAS the several Laws heretofore made for restraining the Privilege of Parliament, with respect 'to Actions or Suits commenced and prosecuted at any Time 'from and immediately after the Dissolution or Prorogation of 'any Parliament, until a new Parliament should meet, or the 'same be re-assembled; and from and immediately after an 'Adjournment of both Houses of Parliament for above the 'Space of fourteen Days, until both Houses should meet or 'assemble; are insufficient to obviate the Inconveniences arising from the Delay of Suits by reason of Privilege of Parliament; whereby the Parties often lose the Benefit of several 'Terms; For the preventing all Delays the King or his 'Subjects may receive in prosecuting their several Rights, 'Titles, Debts, Dues, Demands, or Suits, for which they have 'Cause;" be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth Day of *June*, one thousand seven hundred and seventy, any Person or Persons shall and may, at any Time, commence and prosecute any Action or Suit in any Court of Record, or Court of Equity, or of Admiralty, and in all Cases matrimonial and testamentary, in any Court having Cognizance of Causes matrimonial and testamentary, against any Peer or Lord of Parliament of *Great Britain*, or against any of the Knights, Citizens, and Burgesses, and the Commissioners for Shires and Burghs of the House of Commons of *Great Britain* for the Time being, or against their or any of their menial or any other Servants, or any other Person entitled to the Privilege of Parliament of *Great Britain*; and no such Ac-

Suits may be prosecuted against Peers, and Members of the House of Commons, and their Servants, &c.

No. 1. 10 George III. c. 50.

tion, Suit, or any other Process or Proceeding thereupon shall at any Time be impeached, stayed, or delayed, by or under Colour or Pretence of any Privilege of Parliament. (1.)

II. Provided nevertheless, and be it further enacted by the Authority aforesaid, That nothing in this Act shall extend to subject the Person of any of the Knights, Citizens, and Burgesses, or the Commissioners of Shires and Burghs of the House of Commons of *Great Britain*, for the Time being to be arrested or imprisoned upon any such Suit or Proceedings.

Issues to be sold &c.

III. 'And whereas the Process by *Distringas* is dilatory 'and expensive: For Remedy thereof,' be it enacted by the Authority aforesaid, That the Court out of which the Writ proceeds, may order the Issues levied from Time to Time to be sold, and the Money arising thereby to be applied to pay such Costs to the Plaintiff as the said Court shall think just, under all the Circumstances, to order; and the Surplus to be retained until the Defendant shall have appeared, or other Purpose of the Writ be answered. (2).

IV. Provided always, when the Purpose of the Writ is answered, that then the said Issues shall be returned: or, if sold, what shall remain of the Money arising by such Sale, shall be repaid to the Party distrained upon.

V. And be it further declared and enacted by the Authority aforesaid, That Obedience may be enforced to any Rule of his Majesty's Courts of King's Bench, Common Pleas, or Exchequer, against any Person intitled to Privilege of Parliament, by Distress infinite, in case any Person or Persons intitled to the Benefit of such Rule shall chuse to proceed in that Way.

VI. 'And whereas an Act was made in the twelfth and 'thirteenth Years of the Reign of King *William* the Third, 'intituled, "An Act for preventing any Inconveniencies that 'may happen by Privilege of Parliament,"' be it enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June*, the said Act, and also this Act, shall extend to that Part of *Great Britain* called *Scotland*.

(1.) Mr. Gabbett properly regards this Act as superseding the Provisions of 12 and 13 W. III. c. 3, as amended by 11 Geo. II. c. 24; which only admitted Suits against Members in the Intervals of the Sitting of Parliament; and 2 and 3 Anne, c. 18, admitting Suits against public Officers for Breach of Trust or Misdemeanor in their Office; and which Acts respectively contain a Saving from personal Arrest.

(2.) This Provision is general, and not confined to Suits against Persons having Privilege of Parliament; Raben *v.* Plaistow, 5 Bur. 2726. See, as to Proceedings by Distringas, 51 Geo. III. c. 124, ante. Class 8.

No. 2.

45 George III. c. 124.—An Act to amend an Act, passed in the fourth Year of his present Majesty, intituled, "An Act for preventing Inconveniences arising in Cases of Merchants, and such other Persons as are within the Description of the Statutes relating to Bankrupts, being entitled to Privilege of Parliament and becoming insolvent;" and to prevent Delay in the entering Appearances in Actions brought against Persons having Privilege of Parliament.—[12th. *July* 1805.] P.

No. 2. 45 George III. c. 124.

On Process by Summons without Affidavit, Appearance may be entered for Defendant.

'III. AND whereas the Mode of proceeding by Distringas ' is extremely dilatory and expensive,' be it therefore further enacted by the Authority aforesaid, That from and after the passing of this Act, when any Summons, or original Bill and Summons, shall be sued out against any Person having Privilege of Parliament, and no such Affidavit shall be made and filed as in the said recited Act, and herein-before is mentioned, if the Defendant or Defendants shall not appear at the Return of the Summons, or within eight Days after such Return, in every such Case it shall and may be lawful to and for the Plaintiff or Plaintiffs, upon Affidavit being made and filed in the proper Court of the personal Service of such Summons, which said Affidavit shall be filed gratis, to enter an Appearance or Appearances for the Defendant or Defendants, and to proceed thereon as if such Defendant or Defendants had entered his or their Appearance. (1.)

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(1.) For the other Parts of the Act, see post., Titles *Courts of Equity* and *Bankrupts.*

# PART IV. CLASS VI.

## PLEADINGS AND OTHER PROCEEDINGS PREVIOUS TO TRIAL;*

## *(And herein of Amendments and Jeofails.)*

* The Statutes of Set Off and Limitations are not included, but form the Subjects of the two succeeding Classes.

### No. 1.

14 Edward III. st. 1, c. 6.—A Record which is defective by Misprision of a Clerk, shall be amended.

No. 1. 14 Edward III. st. 1. c. 6.

'ITEM it is assented, That by the Misprision of a 'Clerk in any Place whereso- 'ever it be, no Process shall 'be adnulled, or discontinued, 'by mistaking in Writing one 'Syllable, or one Letter too 'much or too little; but as soon 'as the Thing is perceived, by 'Challenge of the Party, or in 'other Manner, it shall be has- 'tily amended in due Form, 'without giving Advantage to 'the Party that challengeth the 'same because of such Mis- 'prision.'

ITEM est assentu & establi qe par misprision du clerc en quecunque place qe ce soit ne ne soit proces anientiz ne discontinues par mesprendre en escrivant un letre ou un silable tropp ou trop poi mes si tot qe la chose soit aparceu par chalenge du partie ou en autre manere soit hastivement amende en due forme sanz doner avantage a partie qe ce chalenge par cause de tieu mesprision.

### No. 2.

36 Edward III. c. 15.—Pleas shall be pleaded in the *English* Tongue, and inrolled in *Latin*.

No. 2. 36 Edward III. c. 15.

"ITEM, Because it is often "shewed to the King by "the Prelates, Dukes, Earls, "Barons, and all the Com- "monalty, of the great Mis- "chiefs which have happened "to divers of the Realm, "because the Laws, Customs,

ITEM pur ce qe monstre est soventfoitz au Roi par Prelatz Ducs Counts Barons et tout la communalte les grantz meschiefs qe sont advenuz as plusours du realme de ce qe les leyes custumes & estatuz du dit realme ne sont pas conuz com-

*Ex Rot. in Turr.* Lond.

munement en mesme le realme par cause qils sont pledez monstrez & juggez en la lange Franceis qest trop desconue en le dit realme issint qe les gentz qe pledent ou sont empledez en les courtz le Roi & les courtz dautres nont entendement ne conissance de ce qest dit pur eulx ne contre eulx par lour Sergeantz & autres pledours & que resonablement les dites leyes & custumes serront le plus tost apris & conuz & mieultz entenduz en la lange usee en le dit realme & par tant chescun du dit realme se purroit mieultz governer sanz fair offense a le leye & le mieultz garder sauver & defendre ses heritages & possessions & en diverses regions & paiis ou le Roi les nobles & autres du dit realme ont este est bon governement & plein droit fait a chescun par cause qe lour leyes & custumes sont apris & usez en la lange du paiis le Roi desirant le bon governement & tranquillite de son poeple & de ouster & eschure les maulx & meschiefs qe sont advenuz & purront avenir en ceste partie ad pur les causes susdites ordeigne et establi del assent avantdit qe toutes plees qe serront a pleder en ses courtz queconqes devant ses Justicez queconqes ou en ses autres places ou devant ses autres ministres queconqes ou en les courtz & places des autres Seignurs qeconqes deinz le Realme soient pledez monstretz defenduz responduz debatuz & juggez en la lange Engleise et qils soient entreez et enroullez en Latin & qe les leyes & custumes du dit Realme termes & processes soient tenuz & gardez come ils sont & ont

No. 2. 36 Edward III. c. 15.

"and Statutes of this Realm "be not commonly known "in the same Realm, for that "they be pleaded, shewed, "and judged in the *French* "Tongue, which is much un-"known in the said Realm, "so that the People which do "implead, or be impleaded, "in the King's Court, and in "the Courts of other, have no "Knowledge nor Understand-"ing of that which is said for "them or against them by "their Serjeants and other "Pleaders; and that reason-"ably the said Laws and Cus-"toms the rather shall be per-"ceived and known, and "better understood in the "Tongue used in the said "Realm, and by so much "every Man of the said Realm "may the better govern him-"self without offending of the "Law, and the better keep, "save, and defend his Heri-"tage and Possessions: And "in divers Regions and Coun-"tries, where the King, the "Nobles, and other of the said "Realm have been, good "Governance and full Right "is done to every Person, "because that their Laws and "Customs be learned and used "in the Tongue of the Coun-"try:" The King, desiring 'the good Governance and 'Tranquillity of his People, 'and to put out and eschew 'the Harms and Mischiefs 'which do or may happen in 'this Behalf by the Occasions 'aforesaid, hath ordained and 'stablished by the Assent 'aforesaid, that all Pleas which 'shall be pleaded in any Courts 'whatsoever, before any of his 'Justices whatsoever, or in his 'other Places, or before any

No. 2.
36 Edward III. c. 15.

'of his other Ministers whatsoever, or in the Courts and Places of any other Lords whatsoever within the Realm, shall be pleaded, shewed, defended, answered, debated, and judged in the *English* Tongue, *and that they be entered and inrolled in Latin*; and that the Laws and Customs of the same Realm, Terms, and Processes, be holden and kept as they be and have been before this Time; and that by the ancient Terms and Forms of the Declarations no Man be prejudiced, so that the Matter of the Action be fully shewed in the Declaration and in the Writ. And it is accorded by the Assent aforesaid, that this Ordinance and Statute of Pleading begin and hold Place at the fifteenth St. *Hillary* next coming.'

Old Terms and Forms shall be observed in Pleading.

*Ex Rot. in Turr.* Lond.

este avant ces heures et qe per les aunciens termes & formes de counter nul homme soit perdant issint qe la matiere del action soit pleinement monstre en la demonstrance & en le brief. Et est accorde de lassent avantdit que cestes ordeignances & estatuz de pleder comenceent & tiegnent lieu al quinzeine Seint Hiller' prochein avènir.

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## No. 3.

6 Richard II. c. 2.—Writs of Debt, Accompt, &c. shall be commenced in the Counties where the Contracts were made.

No. 3.
6 Richard II. c. 2.

'ITEM, To the Intent that Writs of Debt and Accompt, and all other such Actions, be from henceforth taken in their Counties, and directed to the Sheriffs of the Counties where the Contracts of the same Actions did rise; it is ordained and accorded, That it from henceforth in Pleas upon the same Writs it shall be declared, (1). That

ITEM ut brevia de debito & computo aliisque hujusmodi actionibus quecumque de cetero capiantur in com' & dirigantur vicecomitibus com' ubi contractus actionum earundem emerserint ordinatum est & concordatum quod decetero in placitis super brevibus illis darratum fuerit contractum inde fore factum in allo comitatu quam in brevi originali

(1.) This Act only applies if it appear by the Record that the Contract was in another County, and as Contracts are now not dated at any particular Place, it can merely happen that it should appear in the Declaration that the Contract was made in another County, and therefore, notwithstanding the Statute, Action of Debt, &c. may still be brought in any County, as before; Wms. n. 1 Saund. 75. As to changing the Venue upon Affidavit; vi. ibid, and Tidd's Practice, C. 25.

*Ex Rot. in Turr.* Lond. continetur quod tunc incontinenti breve illud penitus cassetur.

'the Contract thereof was made in another County than is contained in the original Writ, that then incontinently the same Writ shall be utterly abated.'

No. 3. 6 Richard II. c. 2.

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## No. 4.

### 11 Henry IV. c. 3. — Records shall not be amended or impaired after Judgment inrolled.

ITEM ordeignez est & establiz qe Justices des assises par commission nostre Seignur le Roi en les countees de Roialme aprendre assignez & assigners desorenavant facent deliverer pleinement en tresorie nostre dit Seignur le Roi toutz les recordes de les assises de novelle disseisine de mordauncestre & des certifications ove toutz les appurten[illegible] ces & appendances dev[illegible] eux determinez chescune [illegible]cunde an apres qe le plee ent soit determine & juggement rendu sanz pluis delaie. Et qe les recordes & les processes des plees realx & personelx & dassises ne novell disseisine de mortdauncestre & certifications & dautres dont juggement soit renduz & enrollez ou chose touchant tielx plees ne soient en ascune manere amendez ne empeirez par novel entre des clerks ou par record ou chose certifier ou tesmoigner ou commandement dascun Justice qiconqe en null terme apres qe tiel juggement en tielx plees soit donez & enrollez.

'ITEM, It is ordained and stablished, That the Justices assigned, and to be assigned to take Assizes by Commission of our Lord the King in the Counties of the Realm, from henceforth shall cause to be delivered fully in the King's Treasury, all the Records of Assi[illegible] of *Novel disseisin*, of [illegible]*auncester*, and of Certi[illegible], with all Appurte[illegible] and Appendances be[illegible] them determined, every second Year, that the Plea thereof be determined, and Judgment given without more Delay. And that the Records and Process of Pleas real and personal, and of Assises of *Novel disseisin*, or *Mortdancester*, and Certifications, and of others, whereof Judgment is given and inrolled, or Things touching such Plea, [illegible] in no wise be amended nor impaired by new entering of the Clerks, or by the Record or Thing certified in Witness or Commandment of any Justice, in no Term after that such Judgment in such Pleas is given and inrolled.'

No. 4. 11 Henry IV. c. 3.

Justices of Assise shall deliver into the Treasury the Records of Assise, &c. every second Year.

## No. 5.

### 9 Henry V. st. 1. c. 4.—The Justices may amend Defaults in Records or Process after Judgment given.

No. 5. 9 Henry V. st. 1. c. 4

'ITEM, Whereas it was 'ordained and stablished 'in the Statute made the 'fourteenth Year of King '*Edward* the Third after the 'Conquest, that for Misprision 'of the Clerk in any Place 'wheresoever it be, the Process 'of the Plea should not be 'avoided nor discontinued, by 'mistaking in writing one Let- 'ter or Syllable too much or 'too little, but as soon as the 'Thing is perceived, by Chal- 'lenge of the Party, or in other 'Manner, it should hastily be 'amended in a due Form, 'without giving Advantage 'to the Party that challeng[illegible] 'the same because [illegible] 'Misprision;' the [illegible] 'Sovereign Lord, cons[illegible] 'the Diversity of Opinion[illegible] 'which have been upon the 'said Statute, and to put the 'Thing in more open Know- 'ledge, hath declared and or- 'dained at this Time, by Au- 'thority of this present Parlia- 'ment, That the Justices before 'whom such Plea or Record is 'made, or shall be depending, 'as well by Adjournment, as 'by Way of Error, or other- 'wise, shall have Power and 'Authority to amend such Re- 'cord and Process, as afore is 'said, according to the Form 'of the same Statute, as well 'after Judgment in any such 'Plea, Record, or Process 'given, as before Judgment 'given in any such Plea, Re- 'cord, or Process, as long as 'the same Record and Process 'is before them, in the same

*Ex Rot. in Turr.* Lond.

ITEM come ordeine fuit & estable en lestatut fait lan quatorszisme del Roy E. tierce puis le conquest qe pur mesprision du clerk en qeconqe place qe ceo soit ne soit processe du plee anientie ne discontinue par mesprendre en escrivant un lettre ou un silable trop ou trop poy mes si tost come la chose serra apercieu par chalenge du partie ou en autre manere soit hastiment amendee en du fourme sanz doner avantage au partie qe ceo chalengera pur cause de tiel mesprision le Roy nostre severayn Seignur considerant la diversitee doppinions queux [illegible]avoit sur le dit estatut & [illegible] mettre le chose en le pluis [illegible]erte conisaunce ad declares & ordeinez au present par auctorite du cest parlement qe les Justices devaunt queux tiel plee ou recorde est fait ou serra pendant sibien par adjournement come par voie derrour ou autrement eient poar & auctorite de amender tiels recorde & proces come avaunt est dit solonc la forme de mesme lestatut sibien apres juggement en tiel plee recorde ou proces renduz come avaunt le juggement renduz en tiel plee recorde ou proces tant come les ditz recorde & proces soient devaunt eux en mesme le manere come Justices avoient poiar de amendre tielx recorde & proces avaunt juggement renduz par force del dit estatuit en temps du dit Roy E. fait come desuis. Et durrera cest ordinance tanqe a parle-

*Ex Rot. in Turr.* Lond.

ment qi serra tenuz primerement apres la revenue du nostre soverain Seignur en Engleterre de pardela.

'Manner as the Justices had 'Power to amend such Record 'and Process before Judg'ment given by Force of the 'said Statute made in the Time 'of the said King *Edward*. And 'that this Ordinance endure 'till the Parliament that shall 'be first holden after the Re'turn of our Sovereign Lord 'the King into *England* from 'beyond the Sea.'

No. 5.
9 Henry V. st. 1. c. 4.

Made perpetual by 4 H. 6. c. 3. 8 H. 6. c. 12. 15.

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## No. 6.

### 4 Henry VI. c. 3. — Justices in certain Cases may amend their Records according to former Statutes.

ITEM come au parlement tenuz a Westm' le ij. jour du Maij lan du regne le Roi *Henri* pier nostre Seignur le Roi qorest ix reherce fuist coment au parlement tenuz a Westm' lan du regne le Roi [illegible] tierce xiiij ordeigne fuit par auctorite du dit parlement qe pur mesprision de clerc en queconqe place ceo soit ne soit processe de plee anicnte ne discontinue par mesprendre en esçrivant une lettre trop ou trop poy mes sitost come le chose serra aperceive par chalange des parties ou en autre manere soit hastivement amende en du fourmo sanz doner avantage a partie qe ceo chalange pur cause de tiel mesprision le dit nadgairs Roi *Henri* considerant la diversite doppinions qe lem avoit sur le dit estatut & pur mettre le chose en pluis overt conysauns declara & ordina par auctorite du dit parlement tenuz le dit an ix qe les Justices devaunt queux tiel plee ou recorde est fait ou serra pendant sibien par ajournement come par voie derrour

"ITEM, Whereas at the "Parliament holden at "*Westminster* the second Day "of *May*, the ninth Year of "the Reign of King *Henry*, "Father of our Lord the King "that now is, it was rehears"ed, how that at the Parlia"ment holden at *Westminster* "the xiv. Year of King *Edward* "the Third, it was ordained "by the Authority of the said "Parliament, That for Mis"prision of a Clerk, in what"soever Place it be, no Pro"cess or Plea should be undone "nor discontinued, by Over"sight in Writing a Letter or "Syllable too much or too lit"tle, but as soon as the Thing "were perceived by Challenge "of the Parties, or in other "Manner, it should be hastily "amended in due Form, with"out giving Advantage to the "Party that challengeth the "same because of such Mis"prision; the said late King "*Henry*, considering the Di"versities of Opinions which "Men had upon the said Sta"tute, and to put the Thing

No. 5.
4 Henry VI. c. 3.

9 H. 5. c. 4.

No. 6.
4 Henry VI. c. 3.

"in more open Knowledge, "did declare and ordain by "Authority of the said Parliament holden the said ninth "Year, That the Justices before whom such Plea or Record is made, or shall be depending, as well by Adjournment, as by way of Error, "or otherwise, shall have "Power and Authority to "amend such Record and Process, as well after Judgment given as before, by "Force of the said Statute "made in the Time of the "said King *Edward*, which "Ordinance should endure till "the next Parliament, which "should be first holden after "the Return of the said King "*Henry* the Father into *England* from beyond the Sea, "and which now is determined by the Death of the "said late King *Henry* the "Father:" 'Our Sovereign 'Lord, by the Advice and 'Assent aforesaid, hath ordained and established, That the 'said Statute, and the Effect 'of the same, made in the 'said ninth Year, shall hold 'Strength, Force, and Effect, 'in every Record and Process 'of the same, as well after 'Judgment given upon a Verdict passed, as upon a Matter 'in Law pleaded, as a Statute 'available and effectual in Law 'to endure for ever. 'Provided 'always, That this Statute do 'not extend to Records and 'Processes in the Parts of '*Wales*, nor to Records and 'Processes whereby any Person is or shall be outlawed at 'any Man's Suit.'

A Confirmation of the Statute of 14 Ed. 3. st. 1. c. 6 and 9 Hen. 5. c. 4 authorising Justices to amend Records.

*Ex Rot. in Turr.* Lond.

ou autrement eient poair & auctorite damender tielx recorde & processe come devaunt est dit solonc la fourme de mesme lestatut sibien apres juggement en tiel plee recorde ou processee renduz come devaunt le juggement renduz en tielx plee recorde ou processe tant come les ditz recorde & processe soient devaunt eux en mesme la manere come Justices avoient poair demender tielx recorde & processe devaunt juggement renduz par force du dit estatuit en temps le dit Roi E. fait come desuis la quele ordinance endureroit tanqe al proschein parlement qi serroit primerment tenuz apres le revenue du dit Roi *Henri* le pier en Engleterre de pardela & la quele ore est determine par le mort du dit nadgairs Roi *Henri* le pier le Roi nostre soverein Seignur par advis & assent suisditz ad ordine & establie qe le dit estatuit & effect dicell fait le dit an ix[e] teigne force vigour & effect en chescun recorde & processe sibien apres juggement renduz sur verdit passe come sur matiere en leic plede come estatut vaillable & effectuell en ley a toutz jours aduter. Purveu toutz foitz qe cest estatut ne se extende as recordes & processes es parties de Gales ne as recordes & processes par queux ascune persone est ou serra utlage al suyt dascuny.

## No. 7.

### 8 Henry VI. c. 15. The Justices may in certain Cases amend Defaults in Records.

*Ex Rot. in Turr.* Lond.

ITEM ordeigne est & establie qe les Justices du Roy devaunt queux ascune misprision ou defaute soit ou serra trove soit il en ascun recordes & processes qore sount ou serrount pendantz devaunt eux sibien par voie derrour come autrement ou en lez retournez dicellez faitz ou affairez par viscounts coroners bailifs des fraunchises ou autres qeconqes par mesprision des clerks dascuns des ditz Courts du Roi ou par misprision dez viscountz soutz viscountz coroners lour clercs ou autres offices clercs ou ministere qeconqes en escrivant un lettre ou un silable trop ou trop poie aient poair damender tielx defautes & mesprisions solonc lour discretion & par examination ent par les ditz Justices aprendre ou lour semblera bosoignable. Purveu qe cest estatut ne se extende as recordes & processes es partie de Gales ne as recordes & processes dutlagaries des felonies & tresons & les dependantz dicelles.

No. 7. 8 Henry VI, c. 15.

'ITEM, it is ordained and 'established, That the 'King's Justices, before whom 'any Misprision or Default is 'or shall be found, be it in any 'Records and Processes which 'now be, or shall be, depending before them, as well by 'Way of Error as otherwise, 'or in the Returns of the same, 'made or to be made by Sheriffs, Coroners, Bailiffs of 'Franchises, or any other, by 'Misprision of the Clerks of 'any of the said Courts of the 'King, or by Misprision of 'the Sheriffs, Under-sheriffs, 'Coroners, their Clerks, or 'other Officers, Clerks, or 'other Ministers whatsoever, 'in writing one Letter or one 'Syllable too much or too little, 'shall have Power to amend 'such Defaults and Misprisions 'according to their Discretion, 'and by Examination thereof 'by the said Justices to be 'taken where they shall think 'needful. Provided that this 'Statute do not extend to Records and Processes in the 'Parts of *Wales*, nor to the 'Processes and Records of '*Outlawries* of Felonies, and 'Treasons, and the Dependencies thereof.'

Processes in Wales, and Outlawries.

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## No. 8.

### 32 Henry VIII. c. 30.—Mispleadings, Jeofails.

[Inserted ante. Class II. No. 11.]

## No. 9.

### 18 Elizabeth, c. 14.—An Act for Reformation of Jeofails.

No. 9. 18 Elizabeth, c. 14.

This Act extended to Writs of Mandamus, &c. by 9 Ann. c. 20. § 7.

BE it enacted by the Queen's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if any Verdict of twelve Men or more shall be hereafter given in any Action, Suit, Bill, Plaint or Demand, in any Court of Record, the Judgment thereupon shall not be stayed or reversed by reason of any Default in Form, or Lack of Form, touching false *Latin*, or Variance from the Register, or other Defaults in Form, in any Writ original or judicial, Count, Declaration, Plaint, Bill, Suit or Demand, or for Want of any Writ original or judicial, or by reason of any imperfect or insufficient Return of any Sheriff or other Officer, or for Want of any Warrant of Attorney, or by Reason of any Manner of Default in Process, upon or after any *Aid prier* or *voucher*, nor any such Record or Judgment after Verdict to be given hereafter, shall be reversed for any the Defects or Causes aforesaid; any Law, Statute or Usage to the contrary notwithstanding.

After Verdict given in a Court of Record, there shall be no stay of Judgment, or reversing thereof for want of Form, false Latin, Variance, &c. When an Attorney shall deliver his Warrant of Record.

To what Things this Statute shall not extend.

II. Provided always, and be it further enacted by the Authority aforesaid, That this Act, or any Thing therein contained, shall not extend to any Writ, Declaration or Suit of Appeal of Felony or Murder, nor to any Indictment or Presentment of Felony, Murder, Treason, or other Matter, nor to any Process upon any of them, nor to any Writ, Bill, Action or Information upon any popular or penal Statute; any Thing aforesaid to the contrary notwithstanding.

When an Attorney shall enter his Warrant of Record.

III. Provided also, and be it enacted by the Authority aforesaid, That all Attornies in any Suit or Action in any Court of Record, shall deliver in the Warrant of Attornies in such Action or Suit wherein they be named Attornies, to be entered or filed of Record, in such Manner and Form as heretofore by the Law or Statutes in that Behalf made they should or ought to have done, upon Pain to forfeit ten Pounds for every such Offence: The one Moiety thereof to be to the Queen's Majesty, her Heirs and Successors, and the other Moiety to such Officer or Officers, to whom or in whose Office the same Warrant should be delivered, entered or filed, and to suffer Imprisonment by the Discretion of the Justices of the Court for the Time being, where any such Default shall fortune to be had or made; the said ten Pounds to be recovered by Action of Debt, Bill or Information, in which no Essoin, Protection or Wager of Law shall be allowed. 32 H. 8. c. 30. 2 & 3 Ed. 6. c. 32. 21 Jac. 1. c. 13.

## No. 10.

### 27 Elizabeth, c. 5.—An Act for furtherance of Justice, in case of Demurrer and Pleadings.

No. 10. 27 Elizabeth, c. 5. Enforced by 4 Annæ, c. 16.

'FORASMUCH as excessive Charges and Expences, and 'great Delay and Hindrance of Justice hath grown in 'Actions and Suits between the Subjects of this Realm, by 'Reason that upon some small Mistaking or Want of Form in 'Pleadings, Judgments are often reversed by Writs of Error, 'and oftentimes upon Demurrers in Law given otherwise than 'the Matter in Law and very Right of the Cause doth 'require, whereby the Parties are constrained either utterly 'to lose their Right, or else after long Time and great Trouble 'and Expences, to renew again their Suits:' For Remedy whereof, Be it enacted by the Queen's most Excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from henceforth, after Demurrer joined and entred in any Action or Suit in any Court of Record within this Realm, the Judges shall proceed and give Judgment according as the very Right of the Cause and Matter in Law shall appear unto them, without regarding any Imperfection, Defect or Want of Form in any Writ, Return, Plaint, Declaration, or other Pleading, Process or Cause of Proceeding whatsoever, except those only which the Party demurring shall specially and particularly set down and express together with his Demurrer; and that no Judgment to be given shall be reversed by any Writ of Error, for any such Imperfection, Defect or Want of Form as is aforesaid, except such only as is before excepted.

After Demurrer joined and entered, Judgment shall be given, notwithstanding any Defect in Process or Pleading.

What Defects in Form shall be amended by the Court, and what not.

The Party demurring shall set down the Causes.

II. And be it further enacted, That after Demurrers joined and entred, the Court where the same shall be, shall and may by virtue of this Act from Time to Time amend all and every such Imperfections, Defects and Wants of Form as is before mentioned, other than those only which the Party demurring shall specially and particularly express and set down together with his Demurrer as is aforesaid.

The Court may amend Defects of Form after Demurrer joined.

III. Provided always, and be it further enacted by the Authority aforesaid, That this Act, or any Thing therein contained, shall not extend to any Writ, Declaration or Suit of Appeal of Felony or Murder, nor to any Indictment or Presentment of Felony, Murder, Treason or other Matter, nor to any Process upon any of them, nor to any Writ, Bill, Action or Information upon any popular or penal Statute; any Thing aforesaid to the contrary notwithstanding. [This Act extended to Writs of Mandamus, &c. by 9 Annæ, c. 20. § 7.]

Appeal, Indictment, and Presentment of Felony, Murder, Treason.

## No. 11.

### 21 James I. c. 13.—An Act for the further Reformation of Jeofails.

No. 11. 21 James I. c. 13. This Act extended to Writs of Mandamus, &c. by 9 Anne, c. 20. s. 7.

'WHEREAS in the two and thirtieth Year of the Reign 'of King *Henry* the Eighth of famous Memory, a 'good and profitable Law, intituled, "An Act concerning 'Mispleading, Jeofails, and Attornies," was made and 'enacted; and likewise another good and profitable Law 'was made in the eighteenth Year of the Reign of our late 'Sovereign Lady Queen *Elizabeth*, intituled, "An Act for 'Reformation of Jeofails;" by which Laws many Delays 'of Judgments were prevented, and yet notwithstanding 'ing many Things have and daily do fall out, not yet provided 'for, nor remedied by the Laws before-mentioned:'

The Defects of the Statutes of 32 H. 8. c. 30, and 18 El. c. 14.

II. Be it therefore enacted by the Authority of this present Parliament, That if any Verdict of twelve Men or more shall hereafter be given for the Plaintiff or Demandant, or for the Defendant or Tenant, Bailiff in Assize, Vouchee, Pray in Aid, or Tenant by Receipt, in any Action, Suit, Bill, Plaint, or Demand in any Court of Record, the Judgment thereupon shall not be stayed or reversed by reason of any Variance in Form only, between the original Writ or Bill, and the Declaration, Plaint or Demand; or for lack of any Averment of any Life or Lives of any Person or Persons, so as upon Examination the said Person be proved to be in Life; or by reason that the *Venire facias*, *Habeas Corpora*, or *Distringas*, is awarded to a wrong Officer, upon any insufficient Suggestion; or by reason the *Visne* is in some Part misawarded or sued out of more Places, or of fewer Places, than it ought to be, so as some one Place be right named; or by reason that any of the Jury which tried the said Issue is misnamed, either in the Surname or Addition, in any of the said Writs, or in any Return upon any of the said Writs, so as upon Examination it be proved to be the same Man that was meant to be returned; or by reason that there is no Return upon any of the said Writs, so as a Pannel of the Names of Jurors be returned and annexed to the said Writ; or for that the Sheriff's Name or other Officer's Name having the Return thereof, is not set to the Return of any such Writ, so as upon Examination it be proved that the said Writ was returned by the Sheriff or Under Sheriff, or any such other Officer; or by reason that the Plaintiff in an *Ejectione firmæ*, or in any personal Action or Suit, (being an Infant under the Age of one and twenty Years,) did appear by Attorney therein, and the Verdict pass for him; any Law, Custom, or Usage to the contrary notwithstanding.

III. Provided always, and be it further enacted, That this Act, or any Thing therein contained, shall not extend to any Writ, Declaration or Suit of Appeal of Felony or Murther, nor to any Indictment or Presentment of Felony, Murther, or Treason, nor to any Process upon any of them, nor

to any Writ, Bill, Action, or Information, upon any popular or penal Statute; any Thing therein contained to the contrary notwithstanding. 5 Geo. I. c. 13.

No. 11. 21 James I. c. 13.

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## No. 12.

### 13 Charles II. c. 2.—An Act for Prevention of Vexations and Oppressions by Arrests, and of Delays in Suits of Law.

[Inserted ante Class III. No. 13.]

[§ 3. Nonsuit for Want of a Declaration before the End of the next Term after Appearance, and Judgment and Costs against the Plaintiff.]

[§ 6. Delays in Suits by reason of fifteen Days between the Teste and Return of Writs, remedied in Actions personal. —Ejectione firmæ. —Venire facias, Habeas corpora Jurator. —Distringas Jurator.—Fieri facias, Capias ad satisfaciendum; where Exigent lieth after Judgment, or to make the Bail appear, excepted.]

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## No. 13.

### 16 and 17 Charles II. c. 8. — An Act to prevent Arrests of Judgment, and superseding Executions.*

No. 13. 16 & 17 Charles II. c. 18.

This Act extended to Writs of Mandamus, &c. by 9 Annæ, c. 20. sect. 7.

In what Court and Cases Judgment after Verdict shall not be stayed for Default of Form in Pleading.

'WHEREAS great Delay, Trouble, and Vexation hath 'been and still is occasioned to the People of this 'Realm, as well by arresting and reversing of Judgments, as 'by staying Executions by Writs of Error and Supersedeas:' For Remedy thereof, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if any Verdict of twelve Men shall be given in any Action, Suit, Bill, or Demand, to be commenced from and after the five and twentieth Day of *March*, which shall be in the Year of our Lord one thousand six hundred sixty and five, in any of his Majesty's Courts of Record at *Westminster*, or in the Courts of Record in the Counties Palatine of *Chester*, *Lancaster*, or *Durham*, or in his Majesty's Courts of the Great Sessions in any of the twelve Shires of *Wales*; Judgment thereupon shall not be stayed or reversed, for Default in Form or Lack of Form; or by reason that there are not Pledges, or but one Pledge to prosecute, returned upon the original Writ; or because the Name of the Sheriff is not returned upon such original Writ; or for Default of entering Pledges upon any Bill or Declaration; or for Default of alleging the bringing into Court of any Bond, Bill, Indenture, or other Deed whatsoever mentioned in the Declaration, or other Pleading; or for Default of Allegation of the bringing into Court of Letters Testamentary or Letters of Administration; or by reason of the Omission of *Vi & Armis*, or *Contra pacem*; or for or by reason of the mistaking of the Christian Name or Surname of the Plaintiff or

* Called by Twisden J. the omnipotent Act; 1 Vent. 100.

No. 13.
16 & 17 Charles II. c. 8.

Defendant, Demandant or Tenant, Sum or Sums of Money, Day, Month or Year, by the Clerk, in any Bill, Declaration or Pleading, where the right Name, Surname, Sum, Day, Month, or Year, in any Writ, Plaint, Roll or Record preceding, or in the same Roll or Record where the Mistake is committed, is or are once truly and rightly alleged, whereunto the Plaintiff might have demurred and shewn the same for Cause; nor for want of the Averment of *Hoc paratus est verificare*; or for *Hoc paratus est verificare per Recordum*; or for not alleging *Prout patet per Recordum*; or for that there is no right *Venue*, so as the Cause were tried by a Jury of the proper County or Place where the Action is laid ;(1.) nor any Judgment after Verdict, Confession by *Cognovit Actionem*, or *Relicta verificatione*, shall be reversed for want of *Misericordia* or *Capiatur*; or by reason that a *Capiatur* is entered for a *Misericordia*, or a *Misericordia* is entered where a *Capiatur* ought to have been entered; nor for that *Ideo concessum est per Curiam* is entered for *Ideo consideratum est per Curiam*; nor for that the Increase of Costs after a Verdict in any Action, or upon a Nonsuit in Replevin, are not entered to be at the Request of the Party for whom the Judgment is given; nor by reason that the Costs in any Judgment whatsoever are not entered to be by Consent of the Plaintiff; but that all such Omissions, Variances, Defects, and all other Matters of like Nature, not being against the Right of the Matter of the Suit, nor whereby the Issue or Trial are altered, shall be amended (2.) by the Justices or other Judges of the Courts where such Judgments are or shall be given, or whereunto the Record is or shall be removed by Writ of Error.

II. Provided always, and be it further enacted by the Authority aforesaid, That this Act, or any Thing therein contained, shall not extend to any Writ, Declaration, or Suit of Appeal of Felony or Murder, nor to any Indictment or Presentment of Felony, Murder, Treason, or other Matter, nor to any Process upon any of them; nor to any Writ, Bill, Action, or Information upon any Penal Statute, other than concerning Customs and Subsidies of Tonnage and Poundage; any Thing in this Act contained to the contrary thereof in any wise notwithstanding.

In what Cases Execution shall not be stayed by Writ of Error, but upon Recognizance entered according to 3 Jac. I. c. 8.

III. And be it further enacted by the Authority aforesaid, That from and after the twentieth Day of *March*, in the Year of our Lord one thousand six hundred sixty and four, no Execution shall be stayed in any of the aforesaid Courts by Writ of Error or *Supersedeas* thereupon, after Verdict and Judgment thereupon, in any Action Personal whatsoever, unless a Recognizance, with Condition according to the Statute made in

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(1.) The Act cures a Trial in a wrong County, as well as a wrong Venue in the right County; Craft v. Boite, 1 Saund. 246; Mayor of London v. Cole, 7 T. R. 583; and other Cases cited in Williams's Note to 1 Saund. 247.

(2.) An actual Amendment is never made; but the Benefit of the Act is attained by overlooking the Exception; B. N. P. 325.

the third Year of the Reign of our late Sovereign Lord King *James*, shall be first acknowledged in the Court where such Judgment shall be given: And further that in Writs of Error to be brought upon any Judgment after Verdict in any Writ of Dower, or in any Action of *Ejectione firmæ*, no Execution shall be thereupon or thereby stayed, unless the Plaintiff or Plaintiffs in such Writ of Error shall be bound unto the Plaintiff in such Writ of Dower, or Action of *Ejectione firmæ*, in such reasonable Sum as the Court to which such Writ of Error shall be directed shall think fit, with Condition, That if the Judgment shall be affirmed in the said Writ of Error, or that the said Writ of Error be discontinued in Default of the Plaintiff or Plaintiffs therein, or that the said Plaintiff or Plaintiffs be Nonsuit in such Writs of Error, that then the said Plaintiff or Plaintiffs shall pay such Costs, Damages, and Sum and Sums of Money, as shall be awarded upon or after such Judgment affirmed, Discontinuance or Nonsuit had. No. 13. 16 & 17 Charles II. c. 8.

IV. And to the End that the same Sum and Sums and Damages may be ascertained, it is further enacted, That the Court wherein such Execution ought to be granted upon such Affirmation, Discontinuance or Nonsuit, shall issue a Writ to enquire as well of the mean Profits as of the Damages by any Waste committed after the first Judgment in Dower or in *Ejectione firmæ;* and upon the Return thereof, Judgment shall be given and Execution awarded for such mesne Profits and Damages, and also for Costs of Suit. Proviso touching Judgement in Dower and Ejectione firmæ.

V. Provided, That this Act, nor any Thing therein contained, shall not extend to any Writ of Error to be brought by any Executor or Administrator; nor unto any Action popular, nor unto any other Action which is or hereafter shall be brought upon any Penal Law or Statute (except Actions of Debt for not setting forth of Tithes;) nor to any Indictment, Presentment, Inquisition, Information, or Appeal; any Thing herein before expressed to the contrary thereof in any wise notwithstanding. To what Actions this Act shall not extend.

VI. Provided always, That this Act shall continue in Force for three Years, and to the End of the next Session of Parliament after the Expiration of the said three Years, and no longer. [Made perpetual by 22 and 23 Car. 2. c. 4.] The Continuance of this Act.

## No. 14.

### 4 and 5 William and Mary, c. 21.—An Act for delivering Declarations to Prisoners.

WHEREAS by the Course of Practice in the respective Courts of Record at *Westminster*, after the Plaintiff or Plaintiffs, in any Writ issued out of any of the said Courts, have been at great Charge to arrest the Defendant or Defendants upon such Writ, and the Defendant or Defendants for Want of sufficient Bail, are often committed to Gaol, and unless the Plaintiff or Plaintiffs shall, before the End of two No. 14. 4 & 5 William & Mary, c. 21.

No. 14.
4 & 5 William & Mary, c. 21.

'Terms, next after such Arrest, cause such Defendant or Defendants, by Writ of *Habeas Corpus*, to be removed, to be 'charged in the said respective Courts with Declarations of the Cause of such Action or Actions, such Prisoner or Prisoners are, upon a Common Bail or Appearance by Attorney, discharged from their Imprisonment, to the great Prejudice of the Plaintiffs:' For Remedy whereof,

Prisoner in Custody how charged.

II. Be it enacted by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if now, or at any Time after the five and twentieth Day of *March*, one thousand six hundred ninety and three, any Defendant or Defendants be taken or charged in Custody at the Suit of any Person or Persons, upon any Writ or Writs out of any of the said Courts at *Westminster*, and imprisoned, or detained in Prison, for Want of Sureties for their Appearance to the same, the Plaintiff or Plaintiffs, in such Writ or Writs, shall and may, by virtue of this Act, before the End of the next Term, after such Writ or Process shall be returnable, declare against such Prisoner or Prisoners in the respective Court or Courts out of which the Writ or Writs shall issue, whereupon the said Prisoner or Prisoners shall be taken and imprisoned or charged in Custody, and shall or may cause a true Copy thereof to be delivered to such Prisoner or Prisoners, or to the Gaoler or Keeper of the Prison, or Gaoler in whose Custody such Prisoner shall be or remain: To which Declaration or Declarations the said Prisoner or Prisoners shall appear and plead; and if such Prisoner or Prisoners shall not appear and plead to the same, the Plaintiff or Plaintiffs in such Cases shall have Judgment in such Manner as if the Prisoner or Prisoners had appeared in the said respective Courts, and refused to answer or plead to such Declaration.

In the King's Bench Declaration must be *in Custodia* of such a Sheriff, &c.

III. And be it further enacted by the Authority aforesaid, That in all Declarations against any Prisoner or Prisoners detained in Prison by virtue of any Writ or Process issued or to be issued out of the Court of *King's Bench*, it shall be alleged in Custody of what Sheriff, Bailiff, or Steward of any Franchise, or other Person having the Return and Execution of Writs, such Prisoner or Prisoners shall be at the Time of such Declaration by virtue of the Process of the said Court at the Suit of the Plaintiffs: Which Allegation shall be as good and effectual, to all Intents and Purposes, as if such Prisoner or Prisoners were in the Custody of the Marshal of the *Marshalsea* of our Sovereign Lord and Lady, the King and Queen.

No. 15.

8 and 9 William III. c. 11.* — An Act for the better preventing frivolous and vexatious Suits.

* This Act, which contains the Provision as to assigning Breaches in Actions upon Bonds, will be inserted post., Class XIV.

## No. 16.

### 4 Anne, c. 16.*—An Act for the Amendment of the Law, and the better Advancement of Justice.

* See this Act, with Notes, Part II. Class I. No. 23.—An Intention was there intimated of repeating the Title of the Act at this Place, and introducing such Observations as might appear to be material with respect to any Alterations in the Proceedings of Courts of Law. In attempting to fulfil that Undertaking, I have been induced to enter into the general Question of the Propriety and Expediency of departing from the existing Jurisprudence of the Country, with more Particularity than the immediate Subject may seem to require. The Discussion will be found in the Appendix, No. 2.

## No. 17.

### 10 Anne, c. 18.—An Act to give further Time for inrolling such Leases granted from the Crown, as have not been inrolled within the respective Times therein limited; and for making the pleading of Deeds of Bargain and Sale inrolled, and of Fee Farm Rents, more easy. 19.

'III. AND for supplying a Failure in pleading, or deriving the Title to Lands, Tenements, or Hereditaments, conveyed by Deeds of Bargain and Sale, indented and inrolled according to the Statute made in the twenty-seventh Year of the Reign of King *Henry* the Eighth, for Inrolment of Bargains and Sales, where the original Indentures of Bargain and Sale, to be shewed forth or produced, are wanting, which often happens, especially where divers Lands, Tenements, or Hereditaments, are comprized in the same Indenture, and afterwards derived to different Persons;' Be it further enacted by the Authority aforesaid, That where in any Declaration, Avowry, Bar, Replication, or other Pleading whatsoever, any such Indenture of Bargain and Sale inrolled, shall be pleaded with a *Profert in Curia*, or offer to produce the same, the Person or Persons so pleading, shall and may produce and shew forth, and be suffered and allowed to produce and shew forth, by the Authority of this Act, to answer such *Profert* as well against her Majesty, her Heirs and Successors, as against any other Person or Persons, a Copy of the Inrolment of such Bargain and Sale; and such Copy examined with the Inrolment, and signed by the proper Officer, having the Custody of such Inrolment, and proved upon Oath to be a true Copy, so examined and signed, shall be of the same Force, and Effect, to the Intents and Constructions of Law, as the said Indentures of Bargain and Sale were and should be of, if the same were in such Case produced and shewn forth.

No. 17. 10 Anne, c. 18.

If a Bargain and Sale be pleaded, a Copy thereof, proved on Oath, shall be of the same Effect as the Original.

'IV. And for as much as the Fee Farm Rents, and other Rents purchased under an Act of Parliament made in the twenty-second Year of the Reign of King *Charles* the Second, intituled, "An Act for the advancing the Sale of

Where any Fee Farm Rents, sold pursuant to 22 Car. 2. c. 6.

No. 17.
10 Anne, c. 18.
and 22 and 23 Car. 2. c. 24. are described in any Deed, &c. as they were in the Indentures of Bargain and Sale by the Trustees, such Descriptions shall serve.

'Fee Farm Rents, and other Rents," and one other Act made 'in the twenty-second and twenty-third Years of the same 'Reign, intituled, "An Act for vesting certain Fee Farm 'Rents, and other small Rents, in Trustees," cannot always be 'so fully and particularly described, as may be requisite for con- 'veying or pleading the same:' For the better deriving and pleading the Title to such Rents, from the Trustees appointed for selling thereof, pursuant to either of the said Acts, and clearing all Doubts relating to the naming or describing thereof; Be it enacted and declared by the Authority aforesaid, That where any Rent or Rents, intended by the said Acts, or either of them, to be sold, and sold pursuant thereto, is, are, or shall be named or described in any Deeds, Fines, Recoveries, or other Assurances, or in any Declaration, Bar, Avowry, Replication, or other Pleading whatsoever, by such or the like Names or Descriptions, as the same were named or described by in the Indentures of Bargain and Sale made by the Trustees for Sale thereof, pursuant to the said Acts, or either of them, such Names or Descriptions may serve, and are and shall be sufficient for the conveying, deriving, or pleading the Title to such Rent or Rents from or under the said Trustees, and shall be at all Times deemed, judged, and allowed so to be, in all Courts of Law, or elsewhere.

Not to extend to Rent which has not been paid in 20 Years.

V. Provided always, That nothing in this Act contained, shall extend to give or allow any Benefit or Advantage in pleading or deriving Title to any Rent which hath not been paid or levied within twenty Years next before the Time of such pleading or deriving Title to the same.

## No. 18.

5 George I. c. 13.—An Act for the Amendment of Writs of Error; and for the further preventing the arresting or reversing of Judgments after Verdict.

No. 18.
5 George I. c. 13.
Writs of Error varying from Record may be amended.

'I. WHEREAS great Delay of Justice hath of late Years 'been occasioned by defective Writs of Error, 'which as the Law now stands are not amendable:' For Remedy thereof, Be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all Writs of Error, wherein there shall be any Variance from the original Record, or other Defect, may and shall be amended and made agreeable to such Record, by the respective Courts where such Writ or Writs of Error shall be made returnable;

And after Verdict no Judgement stayed or reversed for Defect, in any Bill, Writ, &c.

and that where any Verdict hath been or shall be given in any Action, Suit, Bill, Plaint, or Demand, in any of his Majesty's Courts of Record at *Westminster*, or in any other Court of Record within *England* or *Wales*, the Judgment thereupon shall not be staid or reversed for any Defect or Fault, either in Form

or Substance, in any Bill, Writ original or judicial, or for any Variance in such Writs from the Declaration or other Proceedings.

No. 18. 5 George I. c. 13.

II. Provided nevertheless, That nothing in this Act contained shall extend, or be construed to extend, to any Appeal of Felony or Murder, or to any Process upon any Indictment, Presentment or Information of or for any Offence or Misdemeanor whatsoever.

Not to extend to Appeals of Felony, &c.

## No. 19.

4 George II. c. 26. — An Act that all Proceedings in Courts of Justice within that Part of *Great Britain* called *England*, and in the Court of Exchequer in *Scotland*, shall be in the *English* Language.

No. 19. 4 George II. c. 26.

'WHEREAS many and great Mischiefs do frequently happen to the Subjects of this Kingdom, from the Proceedings in Courts of Justice being in an unknown Language, those who are summoned and impleaded having no Knowledge or Understanding of what is alleged for or against them in the Pleadings of their Lawyers and Attornies, who use a Character not legible to any but Persons practising the Law:' To remedy these great Mischiefs, and to protect the Lives and Fortunes of the Subjects of that Part of *Great Britain* called *England*, more effectually than heretofore, from the Peril of being ensnared or brought in Danger by Forms and Proceedings in Courts of Justice, in an unknown Language, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons of *Great Britain* in Parliament assembled, and by the Authority of the same, That from and after the twenty-fifth Day of *March* one thousand seven hundred and thirty-three, all Writs, Process and Returns thereof, and Proceedings thereon, and all Pleadings, Rules, Orders, Indictments, Informations, Inquisitions, Presentments, Verdicts, Prohibitions, Certificates, and all Patents, Charters, Pardons, Commissions, Records, Judgments, Statutes, Recognizances, Bonds, Rolls, Entries, Fines and Recoveries, and all Proceedings relating thereunto, and all Proceedings of Courts Leet, Courts Baron and Customary Courts, and all Copies thereof, and all Proceedings whatsoever in any Courts of Justice within that Part of *Great Britain* called *England*, and in the Court of Exchequer in *Scotland*, and which concern the Law and Administration of Justice, shall be in the *English* Tongue and Language only, and not in *Latin* or *French*, or any other Tongue or Language whatsoever, and shall be written in such a common legible Hand and Character, as the Acts of Parliament are usually ingrossed in, and the Lines and Words of the same to be written at least as close as the said Acts usually are, and not in any Hand commonly called *Court Hand*, and in Words at Length, and

This Act extended to Wales by 6 Geo. 2. c. 14.

All Proceedings in Courts in England, or Exchequer in Scotland, to be in English, and in Words at Length.

No. 19. 4 George II. c. 26.

not abbreviated; any Law, Custom, or Usage heretofore to the contrary thereof notwithstanding: And all and every Person or Persons offending against this Act, shall for every such Offence forfeit and pay the Sum of fifty Pounds to any Person who shall sue for the same, by Action of Debt, Bill, Plaint, or Information in any of his Majesty's Courts of Record in *Westminster Hall*, or Court of Exchequer in *Scotland* respectively, where no Essoin, Protection, or Wager of Law, or more than one Imparlance shall be allowed.

Penalty 50l. Altered by 6 Geo. 2. c. 14. s. 5.

Mistranslation before 25 March 1733, may be amended before or after Judgment.

II. And be it further enacted by the Authority aforesaid, That Mistranslation, Variation in Form by Reason of Translation, Mispelling or Mistake in Clerkship, or Pleadings or Proceedings begun or to be begun before the said twenty-fifth Day of *March* one thousand seven hundred and thirty-three, being part in *Latin* and part in *English*, shall be no Error, nor make void any Proceedings by reason thereof; but that all Manner of Mistranslation, Errors in Form, Mispellings, Mistakes in Clerkship, may at any Time be amended, whether in Paper or on Record or otherwise, before or after Judgment, upon Payment of reasonable Costs only.

Not to extend to the certifying Proceedings in Court of Admiralty.

III. Provided always, That nothing in this Act, nor any thing herein contained, shall extend to certifying beyond the Seas any Case or Proceedings in the Court of Admiralty; but that in such Cases the Commissions and Proceedings may be certified in *Latin* as formerly they have been.

Statutes for reforming Delays by Jeofails, to be extended to the English Forms.

'IV. And whereas several good and profitable Laws have 'been enacted, to the Intent that the Parties in all manner of 'Actions and Demands might not be delayed and hindered 'from obtaining the Effect of their Suits, after Issue tried and 'Judgment given, by reason of any subtile, ignorant or defec- 'tive Pleadings, nor for any Defect in Form, commonly called '*Jeofails*;' It is hereby enacted and declared, That all and every Statute and Statutes for the Reformation and Amending the Delays arising from any *Jeofails* whatsoever, shall and may extend to all and every Form and Forms, and to all Proceedings in Courts of Justice (except in criminal Cases) when the Forms and Proceedings are in *English*; and that all and every Error and Mistake whatsoever, which would or might be amended and remedied by any Statute of *Jeofails*, if the Proceedings had been in *Latin*, all such Errors and Mistakes of the same and like Nature, when the Forms are in *English*, shall be deemed and are hereby declared to be amended and remedied by the Statutes now in force for the Amendment of any *Jeofails*; and this Clause shall be taken and construed in all Courts of Justice in the most ample and beneficial Manner, for the Ease and Benefit of the Parties, and to prevent frivolous and vexatious Delays.

## No. 20.

6 George II. c. 6.—An Act for obviating a Doubt which may arise upon an Act made in the fourth Year of his present Majesty's Reign, intituled, "An Act that all Proceedings in that Part of *Great Britain* called *England*, and in the Courts of Justice within the Court of Exchequer in *Scotland*, shall be in the *English* Language," so far as the same doth or may relate to the Court of the Receipt of his Majesty's Exchequer, or to any Members or Branches thereof.

No. 20. 6 George II. c. 6.

'WHEREAS by an Act made in the fourth Year of his 'Majesty's Reign, intituled, "An Act that all Proceed- 'ings in the Courts of Justice within that Part of *Great Britain* 'called *England*, and in the Court of Exchequer in *Scotland*, 'shall be in the *English* Language," it is amongst other Things 'enacted, That from and after the twenty-fifth Day of *March* 'one thousand seven hundred and thirty-three, all Writs, Pro- 'cess and Returns thereof, and Proceedings thereon, and all 'Pleadings, Rules, Orders, Indictments, Informations, In- 'quisitions, Presentments, Verdicts, Prohibitions, Certificates, 'and all Patents, Charters, Pardons, Commissions, Records, 'Judgments, Statutes, Recognizances, Bonds, Rolls, Entries, 'Fines and Recoveries, and all Proceedings relating thereunto, 'and all Proceedings of Courts Leet, Courts Baron and Cus- 'tomary Courts, and all Copies thereof, and all Proceedings 'whatsoever in any Courts of Justice within that Part of *Great* '*Britain* called *England*, and in the Court of Exchequer in '*Scotland*, and which concern the Law and Administration of 'Justice, shall be in the *English* Tongue and Language only, 'and not in *Latin* or *French*, or any other Tongue or Language 'whatsoever, and shall be written in such a common legible 'Hand and Character as the Acts of Parliament are usually 'ingrossed in, and the Lines and Words of the same to be 'written at least as close as the said Acts usually are, and not 'in any Hand commonly called *Court Hand*, and in Words at 'length and not abbreviated: And whereas a Doubt may arise, 'whether the Proceedings in the Court of the Receipt of his 'Majesty's Exchequer are or may be comprehended or includ- 'ed within the said Act, or any general Words therein con- 'tained;' For obviating the said Doubts, Be it declared and enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Act, or any Thing therein contained, shall not extend, or be construed, deemed or taken to extend to the said Court of the Receipt of his Majesty's Exchequer, or to any Proceedings therein, or to any Members or Branches thereof.

The Act 4 Geo. 2 c. 26. directing Proceedings in Law to be in English, not to affect the Court of Receipt of the Exchequer.

No. 20.
6 George II. c. 6.
The Business of the said Court to be carried on according to the ancient Method.

II. And be it further enacted by the Authority aforesaid, That the said Court of Receipt and the several Members thereof, and their Under Officers, Deputies and Clerks, shall carry on the Business to them severally and respectively belonging and appertaining, according to the usual Course and ancient Method and Practice, and in like Manner as if the said Act had never been made; any Thing therein to the contrary thereof in any wise notwithstanding.

## No. 21.

6 George II. c. 14. — An Act for the more effectual preventing frivolous and vexatious Arrests, and for the more easy Recovery of Debts and Damages, in the Courts of Great Sessions in the Principality of *Wales*, and in the Court of Assize in the County Palatine of *Chester*, and for the obviating a Doubt which has arisen upon an Act made in the fourth Year of his present Majesty's Reign, intituled, "An Act that all Proceedings in Courts of Justice, within that Part of *Great Britain* called *England*, and in the Court of Exchequer in *Scotland*, shall be in the *English* Language," so far as the same Act doth or may relate to the Courts of Justice holden within the said Principality, and for explaining and amending the said Act.

No. 21.
6 George II. c. 14.
5 Geo. 2. c. 7.
12 Geo. 1. c. 29.

'WHEREAS in and by an Act made in the fifth Year of 'his present Majesty's Reign, intituled, "An Act to 'explain, amend and render more effectual an Act made in the 'twelfth Year of the Reign of his late Majesty King *George* the 'First, intituled, 'An Act to prevent vexatious Arrests,"' it is '*(inter alia)* enacted, That where the Cause of Action should not 'amount to the Sum of ten Pounds or upwards, in any superior 'Court, the Writ, Process, Declaration and all other Pro'ceedings should be in the *English* Tongue, and written in 'Words at length, in a common legible Hand and Character, 'and the Defendant or Defendants in such Cases (a Copy of 'such Process in *English* having been served, as by the said 'Act is directed) shall appear at the Return thereof, or within 'eight Days after such Return: And whereas the Courts of 'Great Sessions in the Principality of *Wales*, and the Court of 'Assize in the County Palatine of *Chester*, are held only for 'and during the Space of six Days,' Therefore for the more effectual and speedy Determination of all Actions personal, to be commenced in the said Courts of Great Sessions, and the said Court of Assize respectively, where the Debt or Damages expressed in the said Process, or declared for, do not amount to the Sum of ten Pounds, Be it enacted therefore by the King's most Excellent Majesty, by and with the Advice and Consent

No. 21. 6 George II. c. 14.

of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in all such personal Actions where the Debt or Damages as aforesaid, shall not amount to the Sum of ten Pounds, to be commenced in the said Courts of Great Sessions and Assize, and where the Plaintiff or Plaintiffs, in such Action or Actions, shall sue out an original Writ or Process, and serve the Defendant or Defendants with a true Copy thereof, by a literate Person, at least eight Days before the Commencement of the said Courts of Great Sessions and Assize respectively, and shall cause on every Copy of such Process to be written the Notice in the said Act specified and directed, the Defendant or Defendants in such Cases shall appear at the Return of such original Writ or Process, or at or before the third Court to be held in the same respective Courts of Great Sessions and Assize, and in case the said Defendant or Defendants shall not appear at the Return of the said original Writ or Process, or at or before the said third Court, that then it shall and may be lawful to and for the Plaintiff or Plaintiffs, or his or their Attorney, upon Affidavit being made and filed in the proper Court, of the personal Service of such Writ or Process as aforesaid (which said Affidavit shall be filed in the said Court, and for the filing whereof there shall be paid the Sum of one Shilling to the proper Officer, and no more) to enter an Appearance for such Defendant or Defendants, and to proceed thereon as if the Defendant or Defendants had entered his, her or their Appearance to such Action or Actions; any Law or Usage in the said Courts of Great Sessions or of Assize to the contrary notwithstanding.

In personal Actions under 10l. on original Writ and Service, &c.

and Defendant's Non-appearance at the third Court, Plaintiff, &c. on Affidavit of Service, may enter Appearance for him.

II. Provided always, no Attorney, Bailiff, or other Person, shall have, take, charge, or demand more than the Sum of five Shillings for the making and serving a Copy of such original Writ or Process issuing out of such Courts of Great Sessions or of Assize, on such Defendant or Defendants respectively as aforesaid.

5s. only for Copy and Service.

'III. And whereas Doubts have arisen whether an Act 'made in the fourth Year of his present Majesty's Reign, intituled, "An Act that all Proceedings in Courts of Justice 'within that Part of *Great Britain* called *England*, and in the 'Court of Exchequer in *Scotland*, shall be in the *English* Language," doth extend to the said Courts of Great Sessions and 'other Courts in the Principality of *Wales*, the said Courts of 'Great Sessions, and the said other Courts in the said Principality, not being therein mentioned;' For the removing and obviating of such Doubts, be it further enacted, and it is hereby declared, That the said last mentioned Act, and all Clauses and Directions therein, shall be deemed and taken, and is and are hereby directed to be deemed and taken to extend to the said Courts of Great Sessions, and all other Courts within the said Principality of *Wales*, in as large, ample and beneficial Manner as if the said Courts of Great Sessions, and the said other

4 Geo. 2. c. 26, extended to Wales.

No. 21. 6 George II. c. 14.

Courts in the said Principality had been particularly mentioned and expressed in the said Act.

Penalties for Offences there against the said Act, where to be recovered.

IV. And it is hereby further enacted, That where any Person or Persons shall offend against the said last mentioned Act in the said Courts of Great Sessions, or the said other Courts in *Wales*, that the Penalty expressed in the said Act to be forfeited and paid for such Offence, shall and may be sued for and recovered by such Person who shall sue for the same, by Action of Debt, Bill, Plaint, or Information, either in any of his Majesty's Courts of Record in *Westminster*, as by the said Act is directed, or in the Court of Great Sessions held for the County where the same Offence shall be committed, wherein no Essoign, Protection or Wager of Law, or more than one Imparlance shall be allowed.

V. And be it further enacted by the Authority aforesaid, That all Writs, Process, and Returns thereof, and Proceedings thereon, and all Pleadings, Rules, Orders, Indictments, Informations, Inquisitions, Presentments, Verdicts, Prohibitions, Certificates, Patents, Charters, Pardons, Commissions, Records, Judgments, Statutes, Recognizances, Bonds, Rolls, Entries, Fines, and Recoveries, and all Proceedings relating thereunto, and all Proceedings of Courts Leet, Courts Baron, and Customary Courts, and all Copies thereof, and all Proceedings whatsoever, in any Courts of Justice within *England*, *Wales*, and the Town of *Berwick upon Tweed*, and in the Court of Exchequer in *Scotland*, and which concern the Law and Administration of Justice, may from and after the twenty-fifth Day of *March* one thousand seven hundred and thirty-three, be written or printed in a common legible Hand and Character, and with the like Way of Writing or Printing, and with the like Manner of expressing Numbers by Figures, as have been heretofore or are now commonly used in the said Courts respectively, and with such Abbreviations as are now commonly used in the *English* Language, and that no Penalty or Punishment shall be incurred, by virtue of the said recited Act, for any other Offence than for Writing or Printing any of the Proceedings, or other the Matters and Things above mentioned, in any Hand commonly called *Court Hand*, or in any Language, except the *English* Language; nor shall any such Penalty or Punishment be extended to the expressing the proper or known Names of Writs or other Process or Technical Words in the same Language as hath been commonly used, so as the same be written or printed in a common legible Hand and Character, and not in any Hand commonly called *Court Hand*; and that all Prosecutions for Offences against the said Act shall be commenced within three Months after the same shall be committed; and that the several Officers in the several Offices of the King's and the Lord Treasurer's Remembrancer, and in the Offices of the Clerk of the Pipe, and the Clerk of Estreats in his Majesty's Court of Exchequer, shall and may write and send out, in Process for his Majesty's Service, Rolls or Sche-

No Penalty to be incurred for Abbreviations,

nor Technical Terms, &c.

Prosecutions within three Months.

Process of the Pipe Office, &c. may be issued as formerly.

dules of all such Debts as have been forfeited and became due and owing to his said Majesty, before the said twenty-fifth Day of *March* one thousand seven hundred and thirty-three, in the same Manner they used to do, provided the Writ or Process to be annexed to the said Rolls or Schedules shall be in the *English* Tongue, and in a common legible Hand, and according to the Direction of the said recited Act; any Thing in the said Act made in the fourth Year of his present Majesty's Reign, or any other Law or Statute, to the contrary thereof in any wise notwithstanding.

No. 21. 6 George II. c. 14.

## No. 22.

### 14 George II. c. 17.—An Act to prevent Inconveniences arising from Delays of Causes after Issue joined.

No. 22. 14 George II. c. 17. Preamble.

'WHEREAS many great Inconveniences have arisen to 'the Subjects of this Kingdom by Means of delaying 'the Trials of Causes between Party and Party after Issue 'joined;' For Remedy whereof, may it please your most Excellent Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That where any Issue is or shall be joined in any Action or Suit at Law (1.) in any of his Majesty's Courts of Record at *Westminster*, the Court of great Session for the Principality of *Wales*, the Court of great Session for the County Palatine of *Chester*, the Court of Common Pleas for the County Palatine of *Lancaster*, or the Court of Pleas for the County Palatine of *Durham*, and the Plaintiff or Plaintiffs in any such Action or Suit hath or have neglected, or shall neglect, to bring such Issue on to be tried according to the Course and Practice of the said Courts respectively, (2.) it shall and may be lawful for the Judge or Judges of the said Courts respectively, at any Time after such Neglect, upon Motion made in open Court (due Notice having been given thereof) (3.) to give the like Judgment for the Defendant or Defendants in

On the Plaintiff's Neglect to bring on an Issue to Trial, the Court may give Judgment as in case of Nonsuit.

(1.) The Act extends to Actions brought by Executors; Howard *v.* Rutborne, Willes 316: to *Qui tam* Actions; Watson *v.* Jackson, 1 Wils. 325; Stone *v.* Farcy, 1 E. 554: to the Traverse of the Return to a Mandamus; Wigan *v.* Holmes, Sayer, 110; R. *v.* Mayor of Stafford, 4 T. R. 689: not to Replevin, in which either Party may carry down the Record; Eggletin *v.* Swart, 1 Bl. Rep. 375.

(2.) Where the Plaintiff has once carried down the Cause for Trial, the Defendant cannot have Judgment, as in case of a Nonsuit, for not carrying it down again; as, where the Plaintiff was nonsuited, and the Nonsuit set aside; King *v.* Pippett, 1 T. R. 492: where the Cause was made a Remanet; Mewburn *v.* Langley, 3 T. R. 1: where a new Trial had been granted; Porzelius *v.* Maddocks, 1 H. B. 101. There may be such Judgment where the Plaintiff withdraws his Record, after entering it for Trial; Burton *v.* Harrison, 1 E. 346.

(3.) In the King's Bench the Rule to shew Cause has been held a sufficient Notice; Loft, 265: but in Gooch *v.* Pearson, 1 H. B. 528, where the Rule had been set aside on a peremptory Undertaking, it was held by the

No. 22.
14 George II. c. 18.

every such Action or Suit, as in Cases of Nonsuit, unless the said Judge or Judges shall upon just Cause (4.) and reasonable Terms allow any further Time or Times for the Trial of such Issue; and if the Plaintiff or Plaintiffs shall neglect to try such Issue within the Time or Times so allowed, then, and in every such Case, the said Judge or Judges shall proceed to give such Judgment as aforesaid.

Judgment given by this Act to have the like Force as Judgments on Nonsuit.

II. Provided always, and be it enacted by the Authority aforesaid, That all Judgments given by virtue of this Act shall be of the like Force and Effect as Judgments upon Nonsuit, (5.) and of no other Force or Effect.

Defendant on such Judgment to have Costs.

III. Provided also, That the Defendant or Defendants shall upon such Judgment be awarded his, her or their Costs, in any Action or Suit where he, she, or they would upon Nonsuit be intitled to the same, and in no other Action or Suit whatsoever. (6.)

Defendant living 40 Miles off shall have ten Days Notice of Trial.

IV. And be it further enacted by the Authority aforesaid, That from and after the first Day of *May* one thousand seven hundred and forty-one, no Indictment, Information, or Cause whatsoever shall be tried at *Nisi prius* before any Judge or Justice of Assize or *Nisi prius*, or at the Sittings in *London* or *Westminster*, where the Defendant or Defendants reside above forty Miles from the said Cities respectively, unless Notice of Trial in Writing has been given at least ten Days before such intended Trial.

Notice of Trial may be countermanded six Days before the Trial intended.

V. And be it further enacted by the Authority aforesaid, That in case any Party or Parties shall have given such Notice of Trial as aforesaid, and shall not afterwards duly countermand the same in Writing, at least six Days before such intended Trial, every such Party shall be obliged to pay unto the Party or Parties to whom such Notice of Trial shall have been given as aforesaid, the like Costs and Charges as if such Notice of Trial had not been countermanded.

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C. B. that Notice must be given of a Motion for Judgment, for not proceeding to Trial pursuant to such Undertaking, although Notice had been given of the former Motion.

(4.) In Mallet *v.* Hilton, 2 H. B. it was laid down by the Court of C. B., that a peremptory Undertaking should be sufficient in case of a first Default. The Court of King's Bench requires an Affidavit of Excuse; but a very slight Excuse is sufficient, even in case of a *Qui tam* Action; Stone *v.* Farey, 1 E. 554. The Insolvency of the Plaintiff is a sufficient Cause, and a peremptory Undertaking, under the Circumstances, was not required; Fisher *v.* Hancock; 36 Geo. III., Tidd's Practice, c. 34. The Insolvency of the Defendant; Bailey *v.* Wilkinson, Doug. 671: but the Court in this Case will make the Plaintiff give a peremptory Undertaking, or consent to a *Stet Processus*; Tidd, ibid.: the Refusal of a Broker, who had negociated an illegal Contract, to give Evidence, although his Liability to Procedure would extend beyond the Time at which the Plaintiff would be bound to try in pursuance of his Undertaking; Raynes *v.* Spicer, 7 T. R. 178. The Court will not open the Matter after the Rule has been discharged upon Affidavit, falsifying the Affidavit of Excuse; Davies *v.* Cottle, 3 T. R. 405.

(5.) Such Judgment cannot be given in Favour of one Defendant, where another has suffered Judgment by Default; as in such Case there could not be any Nonsuit; Weller *v.* Goyton, 1 Bur. 358; Gosse *v.* Macauley and others, Tidd's Prac., ch. 34.

(6.) No Costs therefore can be given in a Judgment, as in case of a Nonsuit, against an Executor; Willes, 316.

# PART IV. CLASS VII.

## SET OFF.*

* Although the Enactments included in this Class consist only of two Sections, included in Acts of which the Provisions were temporary, containing Regulations to the same Effect with those which were permanently enacted by 32 Geo. II. c. 28, (ante. Class II. No. 29), the Importance of the Subject seemed to render it desirable, that they should occupy a distinct Place in the present Collection.

The following general View of the Law of Set Off has already been published in the Appendix to the Translation of Pothier's Treatise on Obligations. The additional Passages are contained in Brackets.

"It is evidently a Principle of natural Reason and Justice, that when two Parties are mutually indebted, the Balance only shall be paid; and that one of the Parties shall not be compellable to pay the Debt which he has incurred, and be left to sue for that to which he is entitled. This Principle forms an essential Part of the Civil Law: and the Effect of such mutual Debts, in destroying each other, is distinguished by the Term *Compensation;* the Extinction or Reduction of the one Debt ensues immediately, and by Operation of Law upon the other, being contracted.

"By the Common Law of England, if the Plaintiff was indebted to the Defendant in as much or more than the Defendant was indebted to him, it was no Defence. Until the Reign of Queen Anne, if a Person who owed me £1000 became a Bankrupt, and I was indebted to him in £50, I must have paid the £50, and have been left to my Chance of any Dividend upon my larger Demand; or, reversing the Account, I must have paid the £1000 entire, and have taken my Chance of the Dividend upon the £50. If my Debtor in the larger Sum died, I must still have paid the Debt due from myself, possibly for the Satisfaction of his specialty Creditors, and might have entirely lost the Whole of my cross Demand. The natural good Sense of Mankind was first shocked at this in the Case of Bankrupts, and it was provided for by 4 Anne, c. 17, § 11, and 5 Geo. II. ch. 30, § 28. Where there was no Bankruptcy, the Injustice of not setting off (especially after the Death of either Party) was so glaring, that Parliament interposed, by the Acts of the 2 and 8 of Geo. II., and in any Actions where there are mutual Debts, the Defendant may *set off* the Debt due to himself, against that for which he is sued. Before the Statutes which have been mentioned, where the Nature of the Employment, Transaction or Dealings, necessarily constituted an Account, consisting of Receipts and Payments, Debts and Credits, the Balance only was considered as the Debt, and could only be recovered.—Vid. Green *v.* Farmer, 4 Burr. 2214.

"The Doctrine which was thus introduced into the Law of *England* partakes very much of the Nature of *Compensation* in Civil Law; but there is this material Difference, that the Debts are not in themselves and of Right balanced and extinguished; that the Right of *Set-off* is merely a Defence to an Action for the Debt; that a Defendant is not obliged, in any Instance, to avail himself of this Right, but may at his Option pay, or on other Grounds contest, the one Debt, and bring a separate Action for the other. If the Creditor, to whom the larger Debt is due, brings an Action in which the other does not set off his mutual Demand, but brings a Counter-action, the Debt due to the first may be set off in the Action by the last, and is not extinguished by his first obtaining a Verdict for his whole Debt; and he may take Advantage of it in the Action against him, remitting so much of what he has recovered, as

will reduce it to the Balance; Baskerville *v.* Brown, *et e contra*, 2 Burr. 1229.

"The Principle that the Debt is not extinguished by the Right of Set-off, is strongly illustrated by the Case of Pitts *v.* Carpenter, 1 Wils. 19, in which it was held that the Plaintiff, to whom a larger Debt than 40*s.* was originally due, but whose Demand was reduced by Set-off to less than that Sum, might bring his Action in a superior Court, and was not within the Provisions of a local Act, confining Debts for less than 40*s.* to an inferior Jurisdiction. [In the Case of an Extent, the Debt due from a third Person to a Debtor of the Crown is levied without any Regard to the Subsistence of a mutual Debt, which might be set off, as between the Debtor and Creditor. This, like many other Parts of the Law of Extent, certainly requires Correction.]

"In the Law of England, as in the Civil Law, the Right of Compensation or Set-off, is confined to Debts; one Injury cannot be balanced against another, nor an Injury against a Debt; Freeman *v.* Hyett, 1 Bl. Rep. 394. Neither can unliquidated Damages, for not performing an Agreement, be set-off, either against another Demand of a similar Nature, or a Debt; Howlett *v.* Strickland, Cowp. 56; Weigall *v.* Waters, 6 T. R. 488; or *vice versa*, a Debt against these; Bull. N. P. 181. And this Rule applies even when there is a Bond with a Penalty, which in point of Form constitutes a Debt, but the Payment of which as such cannot be effectively enforced; Nedriffe *v.* Hogan, Bull. N. P. 180. It may be added, that upon a Bond for the Payment of Money, the Money secured, and not the Penalty of the Bond, is for the Purposes of Set-off considered as the Debt; 8 G. 2. ch. 24. And by setting-off any Money due under such a Bond (as the Arrears of an Annuity), the Bond is not extinguished. But certain stipulated Damages which are precisely due according to the Terms of a Contract, or a Penalty to which the Defendant has become absolutely entitled, may be set off, these being certain liquidated Debts; Fletcher *v.* Dyke, 2 T. R. 32. It was ruled, in Eland *v.* Karr, 1 East, 375, that it was no Answer to a Plea of Set-off, that the Defendant promised to pay the Plaintiff in ready Money. [And in Carnforth *v.* Rivett, 2 M. and S. 510, in an Action for Goods sold, the Defendant, upon Notice of Set-off, proved a Bill of Exchange accepted by the Plaintiff, and which came to the Hands of the Plaintiff after the Sale of the Goods. It appeared that when the Plaintiff demanded the Money, he told him that his Situation was very precarious, or he would not have sold the Goods so cheap; but he was to have ready Money; which the Defendant admitted. The Court held that the Plaintiff should have resisted the taking away of the Goods without ready Money, which he would have had a Right to do by his Agreement; but that by suffering the Defendant to have them without Payment, he had receded from his Agreement. If he once parts with them on Credit, he lets in a Set-off.—See this Case cited infra, on another Point.]

"The mutual Debts must be due in the same Right, and therefore a Person cannot set off a Demand in his own Right against one, for which he is sued as Executor, or the Reverse; Stat. 22 Geo. II. c. 22, s. 13. When a Person continues Tenant, or Receiver to Executors, after a Testator's Death, he cannot set off against Debts contracted by him in that Capacity, Debts due from the Testator in his Life-time; Shipman *v.* Thomson, Bull. N. P. 180; Tegetmyer *v.* Lumley, Willes, 261; Montague on Set-off, 32. Also if a Debt is due *to*, or *from* several Persons jointly, there can be no Set-off on account of the Debt of either of them singly; and a Debt to or from a Man in his own Right cannot be set off against a Debt in Right of his Wife. To this Principle, and also to the public Nature of the Trust reposed in the Assignees of a Bankrupt, may be referred the Decision that such an Assignee cannot retain a Dividend due to one of the Creditors, by setting off a Debt from the Creditor to himself; Brown *v.* Bullen, Doug. 407.

"But where two Persons are indebted *jointly and severally*, that Engagement as being several may be set off against the Debt claimed by either of them individually; Fletcher *v.* Dyke, 2 T. R. 32. Also, a Debt from or to a surviving Partner, may be set off against that for which he sues or is sued, on his own Account; Slipper *v.* Stidstone, 5 T. R. 493; French *v.* Andrade, 6 T. R. 582. (1).

(1.) Where a Bond was given to one of several Partners in a Bank, upon Trust for them all, and for Money advanced by the Firm, it was held

"It is a Proposition confirmed by all the preceding Cases, that a Debt cannot in general be set off, unless a counter Action could be maintained between the same Persons, and in the same Characters. But there may be some Exceptions to the literal Application of this Rule. For Instance, Bottomly sued Brook on a Bond. It was held to be a good Cause of Set-off, that the Bond was given to Bottomly, as a Trustee for Chancellor, and that Chancellor was indebted to the Defendant; vid. 1 T. R. 619, Bottomly *v.* Brook; and Winch *v.* Keely, cited ibid.

"A Debt may be assigned: and, though no Action can be maintained for it in the Name of the Assignee, yet as such Assignments have for various Purposes been recognized in Courts of Law, it may be reasonably inferred, that after a Person has assigned the Debt due to him, and notified the Assignment to the Debtor, he cannot set off that Demand against one which may be due from himself; on the other Hand, it would be reasonable to allow it to be set off, by the Person to whom it was assigned; at least, against any Debt contracted after Notice of the Assignment; and that a Debt due from such Person might be set off, against the Action nominally brought by the original Creditor: but I do not state these Distinctions as having any higher Authority than mere Suggestion.

[It has been since held that a Plea of Set-off by the Assignee of a Bond for valuable Consideration could not be supported. Lord Ellenborough said, he was much more inclined to restrain than to extend the Doctrine in Bottomly *v.* Brooke. Bayley J. "We have nothing to do in this Place with any other legal Rights;" Wake *v.* Tinkler, 16 E. 440.

In Fair, Assignee of Wilson, *v.* Mc. Iver, 16 E. 130, the Defendant purchased Goods of the Bankrupt, to be paid for in a Bill at three Months: the Defendant offered in Payment an Acceptance of the Bankrupt's own, received from P. and F. for the Purpose; and the Object of the Transaction appeared to be, on the whole, to cover P. and F. from the expected Bankruptcy. It having been held that an Offer of such Bill was not a Performance of the Contract, but a Fraud; the Question remained as to the Defendant's Right of Set-off; and it was ruled that the Bill could not be set off by the Defendants, who took the Indorsement of it, not for themselves, but for P. and F. and merely for the Purpose of getting the Bankrupt's Goods without paying for them, and held it merely as Trustees of P. and F.; and that although it was admitted that the Defendants could have brought an Action against Wilson on the Bill, the Court were of Opinion that they could not set it off, not being *bonâ fide* Holders in their own Right. In the subsequent Case of Cornforth *v.* Rivett, 2 M. and S. 510, (mentioned supra as to the principal Point) in which there was a Suspicion that the Defendant held a Bill, which he offered to set off on Behalf of another Person, Lord Ellenborough said—"The Set-off may be good, though he has sold upon Credit; and supposing that it could have been shewn that the Bill was really the Bill of one Person put into the Hands of another Person to set off against his Debt, that might have presented a different Question."]

"A Broker under a Commission *del credere*, who is answerable for Debts and Losses, may set off against a Debt from himself, those Debts which are due to his Principal, and for the Amount of which he is personally liable, the Transactions having passed wholly with himself; Grove *v.* Dubois, 1 T. R. 112. It has even been decided that a Broker with such Commission, who had paid his entire Debt to the Assignees of a Bankrupt, was entitled to recover it back; Bize *v.* Dickason, 1 T. R. 285. And it has been held that a Factor who receives Goods, and is authorized to sell them in his own Name, and makes the Buyer Debtor to himself, has a Right to bring an Action to compel Payment: and it would be no Defence to say, that as between the Buyer and the Principal, the Buyer ought to have the Money, because the Principal is indebted to him in more than that Sum; for the Principal himself can never say that, but where the Factor has Nothing due to him; Drinkwater *v.* Goodwin, Cowp. 251. It seems a necessary Deduction from these Cases, that if a

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that the Amount might be set off against a Debt from the Firm; Crosse *v.* Scarth, 2 M. and S. 545: and joint and separate Debts may be set off against each other by special Agreement; as to which see Kennedy *v.* Hossack, 2 Taunt. 170; but this does not depend upon the Statutes.

Factor sells Goods in his own Name, and an Action is brought by the Principal, the Buyer may set-off any Debt due to him from the Factor; and so it has been decided; George v. Claggett, 7 T. R. 359 (2).

"Amongst the other Effects of Compensation in the Civil Law, as amounting in itself to a Liquidation of the Debt, a Creditor is obliged to restore the Pledge, upon contracting a Debt to an equal Amount, or upon contracting a Debt to a smaller Amount, and an Offer of the Balance I conceive that the Difference between Compensation and Set-off, as established by our modern Statutes, would in this respect be material; that our Right of Set-off is merely a matter of Defence, and is not in any Case the Foundation of a Claim. It is established by several Cases, that there can be no Set-off in the Case of a Distress for Rent; Vid the Cases cited; Sapsford v. Fletcher, 4 T R 511. Lord Kenyon there said, 'It was much to be lamented that it should have been so decided, but for the Sake of Certainty in the Law, they must submit to those Decisions, till the Legislature alter the Law' The Decision in the principal Case was, that a Subtenant, who, under Threats of Distress, had paid Rent to the original Lessor, might defend himself to that Extent against the Distress of his own Landlord, the original Lessee; for that it amounted not to a Set-off, but a Payment, which seems fully to support the Distinction suggested. Upon the same Principle I am strongly inclined to think, that Interest is not stopped by contracting a Debt, which does not carry Interest, and that only the Principal of such a Debt can be set off against the full Claim for Principal and Interest. Before the Statutes of Set-off, the Question could not have arisen, and those Statutes do not seem sufficiently comprehensive to produce the Effect of extinguishing the Debts to the Extent of their Concurrence

"If a Debt, barred by the Statute of Limitations, be pleaded as a Set-off, the Plaintiff may reply the Statute; if it be given in Evidence on a Notice of Set off, it may be objected to at the Trial; Bull, N P. 180, but, perhaps, in most Cases, the Subsistence of the mutual Accounts would be held to take the Case out of the Statute.

"It is now settled, contrary to former Opinions, that Set-off can only be maintained for such Debts as were due at the Commencement of the Action, Evans v. Prosser, 3 T. R. 186.

"The Courts of Law exercise a summary Jurisdiction, with regard to Money due upon Judgments, more extensive than the Right of Set-off under the Statutes; the Provisions for Set-off, under the Bankrupt Laws, are also more extensive than the common Right of Set-off above-mentioned; but a particular Examination of those Subjects, or a View of the Doctrines of Pleadings, and Practice respecting Set-off, does not fall within the Scope of the present Design

"The Principles, and Cases relative to the Law of Set-off, are collected in a Publication by Mr. Montague, which has appeared since the preceding Summary was composed."

(2) See the following Cases which have arisen upon Claims of Set-off, in respect to Transactions with Brokers, but the Discussion of which related rather to the Nature of the Broker's Character in the several Transactions than to any Points affecting the general Law of Set-off: Shee v Clarkson, 12 E 507; De Gaillarde v Pigou, 4 Taunt, 246; Goldschmidt v. Lyon, 4 Taunt 434, Minett v Forrester, 4 Taunt 541, Cumming v. Forrester, 1 M and S 494; Morris v. Cleasby, 1 M. and S 576; Coster v. Eason, 2 M and S 112, Parker v. Beasley, 2 M. and S. 423.

## No. 1.

### 2 George II. c. 22 — An Act for the Relief of Debtors with respect to the Imprisonment of their Persons.

No. 1. 2 George II. c. 22.

XIII. AND be it further enacted by the Authority aforesaid, That where there are mutual Debts between the Plaintiff and Defendant, or if either Party sue or be sued as

Executor or Administrator, where there are mutual Debts between the Testator or Intestate and either Party, one Debt may be set against the other, and such Matter may be given in Evidence upon the General Issue, (1.) or pleaded in Bar, as the Nature of the Case shall require, so as at the Time of his pleading the General Issue, where any such Debt of the Plaintiff, his Testator or Intestate, is intended to be insisted on in Evidence, Notice (2.) shall be given of the particular Sum or Debt so intended to be insisted on, and upon what Account it became due, or otherwise such Matter shall not be allowed in Evidence upon such General Issue.

No. 1.
2 George II. c. 22.
Mutual Debts to be set one against the other.

(1.) This extends to every General Issue, as *non est factum* in Covenant; Bull. N. P. 181.

(2.) The Notice should be almost as certain as Declaration. Debt for Rent on a Lease could not be set off under Notice for Use and Occupation; Bull. N. P. 179. This was decided prior to Stat. 11. Geo. II. c. 19, which gives the Statute for Use and Occupation; but I should conceive that the Statute could not make any Difference when the Lease was by Deed; See Ord *v.* Ruspini, 2 Esp. Ca. N. P. 569; Hampton *v.* Jarratt, 2 Esp. 560. Where the General Issue was pleaded without Notice of Set-off, the Court permitted the Defendant to withdraw the Plea, and pleaded de Novo, with Notice; 2 Str. 1269; and this is now a settled Practice.

## No. 2.

8 George II. c. 24. — An Act to explain and amend an Act passed in the second Year of the Reign of his present Majesty, intituled, "An Act for the Relief of Debtors with respect to the Imprisonment of their Persons."

'IV. AND whereas the Provision for setting mutual Debts ' one against the other, is highly just and reasonable ' at all Times;' Be it therefore further enacted by the Authority aforesaid, That the said Clause in the said first recited Act, for setting mutual Debts one against the other, shall be and remain in full force for ever.

No. 2.
8 George II. c. 24.
Clause in 2 G. 2, c. 22, made perpetual.

V. And be it further enacted and declared by the Authority aforesaid, That by virtue of the said Clause in the said first recited Act contained, and hereby made perpetual, mutual Debts may be set against each other, either by being pleaded in Bar, or given in Evidence on the General Issue, in the Manner therein mentioned, notwithstanding that such Debts are deemed in Law to be of a different Nature; unless in Cases where either of the said Debts shall accrue by reason of a Penalty contained in any Bond or Specialty; and in all Cases where either the Debt for which the Action hath been or shall be brought, or the Debt intended to be set against the same hath accrued, or shall accrue, by reason of any such Penalty, the Debt intended to be set off, shall be pleaded in Bar, in which Plea shall be shewn how much is truly and justly due on

No. 2.
8 George II.
c. 24.

either Side; (1.) and in case the Plaintiff shall recover in any such Action or Suit, Judgment shall be entred for no more than shall appear to be truly and justly due to the Plaintiff, after one Debt being set against the other as aforesaid.

(1.) This is imperative, and upon such Bond, &c. the Defence can only be made by Plea, and the Defendant must set forth the Sum due, which may be traversed; Symmons v. Knox, 3 T. R. 65; and the Sum being laid under a Videlicet, makes no Difference; Greenwood v. Barret, 6 T. R 460

# PART IV. CLASS VIII.

## LIMITATION OF ACTIONS.*

* See General Note at the End of the Title.

### No. 1.

### 32 Henry VIII. c. 2.—The Act of Limitation with a Proviso. (1.)

No. 1. 32 Henry VIII. c. 2.

'FORASMUCH as the Time of Limitation appointed for 'suing of Writs of Right, and other Writs of Possession 'and Seisin of Mens Ancestors or Predecessors, or of their 'own Possession or Seisin, by the Laws and Statutes of this 'Realm heretofore made, limited and appointed, extend, and be 'of so far and long Time past, (2.) that it is above the Remem'brance of any living Man, truly to try and know the perfect 'Certainty of such Things, as hath or shall come in Trial, or 'do extend unto the Time and Times limited by the said Laws 'and Statutes, to the great Danger of Mens Consciences that 'have or shall be impanelled in any Jury for the Trial of the 'same; and it is also a great Occasion of much Trouble, 'Vexation and Suits to the King's loving Subjects at the com'mon Laws of this Realm; so that no Man, although he and 'his Ancestors, and those whose Estate he or they have, have 'been in peaceable Possession of a long Season, of and in 'Lands, Tenements and other Hereditaments, is or can be in 'any Surety, Quietness or Rest, of and in the same, without 'a good Remedy and Reformation be had, made and provided 'for the same:' Be it therefore enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, That no manner of Person or Persons shall from henceforth sue, have or maintain any Writ of Right, or make any Prescription, Title or Claim of, to or for any Manors, Lands, Tenements, Rents, Annuities, Commons, Pensions, Portions, Corrodies or other Hereditaments, of the Possession of his or their Ancestor or Predecessor, and declare

The Limitation of Prescription in a Writ of Right.

This Clause not to extend to Writs of Right of Advowson, &c.

(1.) For Cases to which the general Provisions of this Act do or do not extend, see Comyn's Dig. *Temps.*

(2.) By the ancient Law, from the Time of Henry I.; by the Statute of Merton, 20 Henry II. c. 8, from the Time of Henry II.; by the Statute of Westminster 1, 3 Edw. I. c. 39, from the Time of Richard the First; III. Bl. Com. 196.

No. 1.
32 Henry VIII. c. 2.

and allege any further Seisin or Possession of his or their Ancestor or Predecessor, but only of the Seisin or Possession of his Ancestor or Predecessor, which hath been, or now is, or shall be seized of the said Manors, Lands, Tenements, Rents, Annuities, Commons, Pensions, Portions, Corrodies or other Hereditaments, within threescore Years(3.) next before the *Teste* of the same Writ, or next before the said Prescription, Title or Claim so hereafter to be sued, commenced, brought, made or had.

Limitation of Prescription to Actions Possessory.

II. And be it further enacted by the Authority aforesaid, That no manner of Person or Persons shall hereafter sue, have or maintain any Assise or Mort-ancestor, Cosinage, Ayel, Writ of Entry upon Disseisin done to any of his Ancestors or Predecessors, or any other Action possessory, upon the Possession of any of his Ancestors or Predecessors, for any Manors, Lands, Tenements, or other Hereditaments, of any further Seisin or Possession of his or their Ancestor or Predecessor, but only of the Seisin or Possession of his or their Ancestor or Predecessor, which was, or hereafter shall be seized of the same Manors, Lands, Tenements, or other Hereditaments, within fifty Years next before the *Teste* of the Original of the same Writ hereafter to be brought.

Concerning Suit for Land of his own Possession.

III. And be it further enacted by the Authority aforesaid, That no Person nor Persons shall hereafter sue, have or maintain any Action for any Manors, Lands, Tenements, or other Hereditaments of or upon his or their own Seisin or Possession therein, above thirty Years next before the *Teste* of the Original of the same Writ hereafter to be brought.

Avowry or Cognizance for any Rent, Suit, or Service.

IV. And be it also enacted by the Authority aforesaid, That no Person nor Persons shall hereafter make any Avowry or Cognizance for any Rent, Suit or Service, and allege any Seisin of any Rent, Suit or Service in the same Avowry or Cognizance, in the Possession of his or their Ancestors or Predecessors, or in his own Possession, or in the Possession of any other, whose Estate he shall pretend or claim to have above fifty Years (4.) next before the making of the said Avowry or Cognizance.

Formedons in Revertor or Remainder, Scire Fac' upon Fines.

V. And over that be it enacted by the Authority aforesaid, That all Formedons in Reverter, Formedons in Remainder, and *Scire facias* upon Fines, of any Manors, Lands, Tenements, or other Hereditaments, at any Time hereafter to

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(3.) A Writ of Right cannot be maintained by any Person without shewing an actual Seisin, by taking the Esplées or Profits either on the Demandant himself, or the Ancestor under whom he claims within sixty Years. See Observations as to the Propriety of reducing the Time of Limitation, in general Note at the End of the Title. [12.]

It is a Mistake to suppose, that a Title of sixty Years is absolutely conclusive of the Right; for if an Estate Tail is discontinued by Fine, &c., a Right of Entry may arise at any indefinite Period of Time, by Failure of the Issue in tail, without having suffered a Recovery.

(4.) This Limitation only applies where it is necessary to allege Seisin, and not where a Rent is expressly created by Deed; in which Case there is no Limitation; 1 Inst. 115, as Foster's Case, 8 Rep. 64. But this is subject to the Qualification, that the Certainty of the Rent should appear in the Deed

be sued, shall be sued, used and taken within fifty Years next after that the Title and Cause of Action fallen, and at no Time after the said fifty Years passed.

No. 1. 32 Henry VIII. c. 2.

VI. And be it also enacted by the Authority aforesaid, That if any Person or Persons at any Time hereafter do sue any of the said Actions or Writs, for any Manors, Lands, Tenements or other Hereditaments, or make any Avowry, Cognizance, Prescription, Title or Claim of or for any Rent, Suit, Service or other Hereditaments, and cannot prove that he or they, or his or their Ancestors or Predecessors, were in actual Possession or Seisin of and in the same Manors, Lands, Tenements, Rents, Suits, Services, Annuities, Commons, Pensions, Portions, Corrodies or other Hereditaments, at any Time or Times within the Years before limited and appointed in this present Act, and in Manner and Form as is aforesaid, if the same be traversed or denied by the Party Plaintiff, Demandant, or Avowant, or by the Party Tenant or Defendant, that then and after such Trial therein had, all and every such Person and Persons and their Heirs, shall from henceforth be utterly barred for ever, of all and every the said Writs, Actions, Avowries, Cognizance, Prescription, Title or Claim hereafter to be sued, had or made, of and for the same Manors, Lands, Tenements, Hereditaments or other the Premisses, or any Part of the same, for the which the same Action, Writ, Avowry, Cognizance, Prescription, Title or Claim hereafter shall be at any Time had, sued or made.

Bar for Default of Seisin within the Time of Limitation.

VII. Provided alway, and be it enacted by the Authority aforesaid, That all and every Person and Persons which now have any of the said Actions, Writs, Avowries, *Scire facias*, Cognizance, Prescription, Title or Claim depending, or that hereafter shall sue, commence, make or bring any of the said Writs or Actions, or make any of the said Avowries, Cognizances, Prescription, Titles or Claim, at any Time before the Feast of the Ascension of our Lord God, which shall be in the Year of our Lord God, a thousand five hundred forty and six, shall alledge the Seisin of his or their Ancestors or Predecessors, or his own Possession and Seisin, and also have all other like Advantages to all Intents and Purposes in the same Writs, Actions, Avowries, Cognizances, Prescriptions, Titles and Claims, as he or they might have had at any Time before the making of this Estatute; this Act or any Thing therein contained to the contrary notwithstanding.

A Proviso for Suits depending A. D. 1546.

VIII. Provided also, and be it further enacted by the Authority aforesaid, That if any Person or Persons now being within the Age of twenty-one Years, or covert Baron, or in

A Proviso to relieve Women covert, Infants within Age,

tor if the Deed only reserves such Rent as the Person reserving pays over, without expressing what it is, Seisin is equally necessary to both Rents, and both are within the Statute; 1 Inst. ub. sup.; Collins *v.* Goodall, 2 Vern. 255; and see Stackhouse *v.* Barnston, 10 Vesey, 466. As to Presumptions of Release or Extinguishment from Length of Time, see the S. C., and Eldrige *v.* Knott, Cowp. 214. The Statute does not attach upon a Rent created originally by Act of Parliament; Fawlkner *v.* Bellingham, Cro. Car. 81.

No. 1. 32 Henry VIII. c. 2.

Persons in Prison, or out of the Realm, at the Time of this Statute made.

Prison, or out of this Realm of *England*, now having Cause to have, sue, commence, make or bring any of the said Writs or Actions, or to make any Avowries, Cognizances, Prescriptions, Titles or Claims, that it shall be lawful to such Person or Persons being within Age, covert Baron, in Prison, or out of this Realm, to sue, commence, or bring any of the said Writs or Actions, or make any of the said Avowries, Cognizances, Prescriptions, Titles or Claims, at any Time within six Years next after such Person or Persons, now being within Age, shall accomplish the Age of one and twenty Years, or within six Years next after such Person or Persons now being covert Baron, shall be sole, or within six Years next after such Person or Persons, now being in Prison, shall be set at his Liberty, or within six Years next after such Person or Persons now being out of this Realm, shall come and be within this Realm: And that every such Person and Persons in their said Actions, Writs, Avowries, Cognizances, Prescription, Titles or Claims to be made, sued or commenced within the said six Years, shall alledge within the six Years the Seisin of his or their Ancestors or Predecessors, or of his own Possession or of the Possession of those whose Estate he shall then claim; and also within the same six Years shall have all and every like Advantages to all Intents and Purposes in the same, as he or they might have had before the making of this Act, and as though this Act had never been had ne made; this Act nor any Thing therein contained to the contrary notwithstanding.

A Remedy to relieve the Heirs of an Infant, a Woman covert, any Person in Prison, or out of the Realm, if the Party himself die before Judgment.

IX. Provided also, That if it happen the said Person or Persons, not being within Age, or Covert Baron, in Prison, or out of this Realm, having cause to sue, commence, make or bring any the said Writs, Actions, Avowries, Cognizance, Prescription, Title or Claim, to decease within Age, or being covert, as is aforesaid, or during the Time he or they shall be in Prison or out of this Realm, or to decease within six Years next after such Person or Persons shall accomplish his or their full Ages, or shall be at large within this Realm, or shall become sole, and no Determination or Judgment had of such Titles, Actions, or Rights, so to them accrued; that then the next Heir or Heirs of such Person or Persons being in Prison, or out of this Realm, or within Age, or being covert Baron, so dying, shall have and enjoy all and every such Liberty and Advantage to sue, demand, advow, declare or make their said Titles, Claims or Prescriptions within six Years next after the Death of such Person or Persons now imprisoned or being out of this Realm, or within Age, or covert de Baron, in such or like Manner and Form to all Intents and Purposes, as the same Infant after his full Age, or the said Woman covert after the Death of her Husband, or the same Person being out of this Realm after his Repair or Coming into the same, or the said Person imprisoned after his Enlargement and coming out of Prison, should or might have had within six Years then next ensuing, by Force and Virtue of the Provision last before

rehearsed; any Thing in this Act contained to the contrary thereof, in any wise notwithstanding.

No 1. 32 Henry VIII. c. 2.

X. Provided also, That if any Person or Persons before the said Feast of the Ascension of our Lord God, which shall be in the said Year of our Lord God One thousand five hundred and forty-six, commence and sue any of the said Actions or Writs, or make any Avowry, Prescription, Title or Claim, and the same Action, Writ, Avowry, Cognizance, Prescription, Title or Claim happen, by the Death of any of the Parties to the same, to be abated before Judgment or Determination thereof had; that then the said Person or Persons, being Demandants or Avowants, or making any such Cognizance, Prescription, Title or Claim, being then alive, and if not, then the next Heir or Heirs of such Person or Persons so deceased, may commence and pursue his or their Action and Suit, and make his or their Avowry, Cognizance, Prescription, Title or Claim, for or upon the same Matter, within one Year next after such Action or Suit abated, and shall have and enjoy all and every such Liberty and Advantage to sue, demand, avow, declare or make their said Titles, Claims or Prescriptions, within the said one Year, as the Demandant or Demandants in such Suit or Writ abated, or as such as did avow or make Cognizance, Title or Claim, or Prescription, should or might have done, had, used, made or enjoyed in the said former Action or Suit; any Thing in this Act to the contrary notwithstanding.

A Remedy for the Heir, if the Suit of his Ancestor abate before Judgment.

XI. Provided furthermore, That if any false Verdict happen hereafter to be given or made in any of the said Actions, Suits, Avowries, Prescriptions, Titles or Claims, that then the Party grieved by reason of the same shall and may have his Attaint upon every such Verdict so given or made, and the Plaintiff in the same Attaint, upon Judgment for him given, shall have his Recovery, Execution and other Advantage, in like Manner and Form as heretofore hath been used and accustomed; any Thing before in this Act contained to the contrary thereof notwithstanding.

The Party grieved may have an Attaint upon a false Verdict given.

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## No. 2.

## 1 Mary, Session 2, c. 5. — An Act for the Limitation of Prescription in certain Cases.

No. 2. 1 Mary, Sess. 2. c. 5.

'WHERE at a Parliament holden at *Westminster* the 'twenty-fourth Day of *July* in the thirty-second Year 'of the Reign of the late King of famous Memory, King 'Henry the Eighth, it was enacted, That no manner of Per'son or Persons should from thenceforth sue, have or maintain 'any Writ of Right, or make any Prescription, Title or Claim 'of, to or for any Manors, Lands, Tenements, Rents, Annu'ities, Commons, Pensions, Portions, Corrodies or other He'reditaments of the Possession of his or their Ancestor or 'Predecessor, and declare and alledge any further Seisin or

Certain Writs and Acts whereunto the Statute of Limitation made 32 H. 8. c. 2. shall not extend.

No. 2.
1 Mary, Sess. 2. c. 5.

'Possession of his or their Ancestor or Predecessor, but only 'of the Seisin or Possession of his Ancestor or Predecessor 'which hath been, or then was or shall be seised of the said 'Manors, Lands, Tenements, Rents, Annuities, Commons, 'Pensions, Portions, Corrodies or other Hereditaments within 'threescore Years next before the *Teste* of the same Writ, or 'next before the said Prescription, Title or Claim, sued, commenced, brought, made or had after the making of the 'same Act.'

A Rehearsal of Part of the Stat. of 32 H 8 c 2. touching Limitation of Prescription.

'II. And where also it was further enacted by the Authority aforesaid, amongst other Things, that no Person or Persons should after that make any Avowry or Cognisance for 'any Rent, Suit or Service, or alledge any Seisin of any 'Rent, Suit or Service, in the same Avowry or Cognisance, in the Possession of his or their Ancestors or Predecessor or Predecessors, or in his own Possession, or in the 'Possession of any other whose Estate he should after that pretend or claim to have, above *fifty* Years next before the 'making of the said Avowry or Cognisance.

'III. And where by the same Act it was also further enacted amongst other Things, That if any Person or Persons 'at any Time after that, did sue any of the said Actions or 'Writs for any Manors, Lands, Tenements or other Hereditaments, or make any Avowry, Cognisance, Prescription, 'Title or Claim of or for any Rent, Suit, Service or other Hereditaments, and could not prove that he or they, or his or 'their Ancestors or Predecessors were in actual Possession and 'Seisin of and in the same Manors, Lands, Tenements, Rents, 'Suits, Services, Annuities, Commons, Pensions, Portions, 'Corrodies or other Hereditaments, at any Time or Times 'within the Years before limited and appointed in the same 'Act, in Manner and Form as is aforesaid; that if the same 'Seisin were traversed or denied by the Party Plaintiff, Demandant or Avowant, or by the Party Tenant or Defendant, 'that then and after such Trial therein had, all and every such 'Person and Persons and their Heirs, should from thenceforth 'be utterly barred for ever of all and every the said Writs, 'Actions, Avowries, Cognisance, Prescription, Title and Claim 'after that to be sued, had or made of and for the same Manors, 'Lands, Tenements, Hereditaments or other the Premises, or 'any Part of the same, for the which the same Action, Writ, 'Avowry, Cognisance, Prescription, Title or Claim should at 'any Time be had, sued or made;

Certain Doubts moved upon the said Statute of 32 H. 8. c. 2.

'IV. Upon which said Act, Doubt and Ambiguity hath 'risen and been moved, whether a Writ of Right of Advowson, a *Quare Impedit*, *Jure Patronatus*, or Assise of *Darein Presentment*, may be maintained by any Person or Persons, 'Bodies Politick or Corporate, whereas the same Person or 'Persons, Bodies Politick or Corporate, their Ancestor or Predecessor, or he or they by whom he or they do claim cannot 'lay the *Esplees*, Seisin or Presentment, in him or themselves, 'or the Ancestor or Predecessor of them or any of them, or in

'him or them by whom he or they do claim, within threescore 'Years next before the *Teste* of the same Writ of Right of 'Advowson, *Quare Impedit* or Assise of *Darcin Presentment*, 'and *Jure Patronatus;* And also whether any Person or Per'sons, Bodies Politick or Corporate, having a Seigniory by 'Reason of any Castles, Honours, Manors, Lands, Tene'ments or Hereditaments of him or them holden by Knights 'Service, may maintain a Writ of Right of Ward, or a Writ 'of Ravishment of Ward, for any Castles, Honours, Manors, 'Lands, Tenements or Hereditaments holden by Knights Ser'vice, or for the Body of any Ward that he or they claim by 'reason of any such Tenure by Knights Service; whereas he 'or they have not been seised of the same Services within 'threescore Years next before the *Teste* of any such Writs:" For the Explanation and plain Declaration whereof, and in avoiding of the said Ambiguities and Doubts, Be it enacted and declared by the Queen's Highness, with the Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, That the said former Act made in the said xxxij. Year of the Reign of the said late King *Henry*, or any Article, Clause, Sentence, or Matter therein contained, shall not extend to any Writ of Right of Advowson, *Quare Impedit* or Assise of *Darein Presentment*, nor *Jure Patronatus;* nor to any Writ of Right of Ward, Writ of Ravishment of Ward, for the Wardship of the Body, or for the Wardship of any Castles, Honours, Manors, Lands, Tenements or Hereditaments holden by Knights Service, nor to the Seisor of the Wardship of the Body of any Ward or Wards, or to the Seisor of Wardship of any Castles, Honours, Manors, Lands, Tenements or Hereditaments holden by Knights Service; but that all and every Person and Persons, Bodies Politick and Corporate, their Heirs and Successors, and the Heirs and Successors of every of them, shall and may have, maintain and pursue all and singular the said Writs of Right of Advowson, *Quare Impedit*, Assise of *Darein Presentment*, *Jure Patronatus*, Writs of Right of Ward, Ravishment of Ward, and also seise the Wardship both of the Body and of the Castles, Honours, Manors, Lands, Tenements and Hereditaments, holden by Knights Service, in like Manner and Form to all Intents, Constructions and Purposes, as they or any of them should or might have done, made or pursued before the making of the said Act made in the xxxij. Year, as though the same Act had never been had or made; any Thing in the said former Act to the contrary notwithstanding. 21 Jac. 1. c. 16. *And see farther* 10 *W.* 3. *c.* 4. *and* 4 *Ann. c.* 16.

No. 2. 1 Mary, Sess. 2. c. 5.

Certain Writs and Acts whereunto the said Statute shall not extend.

## No. 3.

21 James I. c. 2.—An Act for the general Quiet of the Subjects against all Pretences of Concealment whatsoever.

[Inserted Pt. II. Cl. XII. No. 22.]

## No. 4.

### 21 James I. c. 16.—An Act for Limitation of Actions, and for avoiding of Suits in Law.

No. 4. 21 James I. c. 16.

Writs of Formedon shall be sued within twenty Years.

FOR quieting of Mens Estates, and avoiding of Suits, be it enacted by the King's most excellent Majesty, the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, That all Writs of *Formedon in Descender, Formedon in Remainder*, and *Formedon in Reverter*, at any Time hereafter to be sued or brought, of or for any Manors, Lands, Tenements or Hereditaments, whereunto any Person or Persons now hath or have any Title, or Cause to have or pursue any such Writ, shall be sued and taken within twenty Years next after the End of this present Session of Parliament: And after the said twenty Years expired, no such Person or Persons, or any of their Heirs, shall have or maintain any such Writ, of or for any of the said Manors, Lands, Tenements or Hereditaments; and that all Writs of *Formedon in Descender, Formedon in Remainder*, and *Formedon in Reverter*, of any Manors, Lands, Tenements, or other Hereditaments whatsoever, at any Time hereafter to be sued or brought by Occasion or Means of any Title or Cause hereafter happening, shall be sued and taken within twenty Years next after the Title and Cause of Action first descended or fallen, and at no Time after the said twenty Years; and that no Person or Persons that now hath any Right or Title of Entry into any Manors, (1.) Lands, Tenements or Hereditaments now held from him or them, shall thereinto enter, but within twenty Years next after the End of this present Session of Parliament, or within twenty Years next after any other Title of Entry accrued; and that no Person or Persons shall at any Time hereafter make any Entry into any Lands, Tenements or Hereditaments but within twenty Years next after his or their Right or Title which shall hereafter first descend or accrue to the same; (2.) And in default thereof, such

Entry into Land, &c. shall be made within twenty Years.

For Entries to avoid a Fine, see 4 Annæ, c. 16. Sect. 16.

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(1.) This Limitation extends to the Rights of the Lord of a Manor as to Mines, Lands, &c., within the Manor; Rich *v.* Johnson, Str. 1142; Bull, N. P. 102, by the Name of Lord Cullen *v.* Rich. So to the Right of Entry by a Commoner, if the Common has been inclosed twenty Years; vi. Hawke *v.* Bacon, 2 Taunt. 160. As to the Lord of a Manor's Right of Entry for a Forfeiture, see Doe d. Tarrant *v.* Hellier, 3 T. R. 172.

(2.) But the Right of Entry may be pursued within twenty Years after it attaches, although in the mean Time the Party may have had a different Right, upon which more than twenty Years adverse Enjoyment have attached. Thus, when a Tenant in tail of Lands in ancient Demesne demised them, by Fine, in the Court of ancient Demesne for three Lives, and afterwards levied a Fine of the Reversion in the same Court to the Use of himself and his Heirs; it being agreed, that the Fines in that Court did not bar the Estate Tail, it was held that the first Fine created a Discontinuance, and the second did not; and that although the Issue in Tail did not bring their Formedon within twenty Years after the Death of their Ancestor, they were not barred of their Right of Entry within twenty Years from the Determination of the Lease for Lives; Hunt *v.* Bourne, 1 Salk. 339, 2 Salk. 421. So, where the Devisor of an Estate had made a Lease for Years, with Clause of Re-entry on Payment of Rent, and after his Death the Heir received the Rent during the Lease (being

Persons so not entering, and their Heirs, shall be utterly excluded and disabled from such Entry after to be made; any former Law or Statute to the contrary notwithstanding. No. 4. 21 James I. c. 16.

II. Provided nevertheless, that if any Person or Persons, that is or shall be entitled to such Writ or Writs, or that hath or shall have such Right or Title of Entry, be or shall be at the Time of the said Right or Title first descended, accrued, come or fallen, within the Age of one and twenty Years, *Feme Covert, Non Compos Mentis,* imprisoned or beyond the Seas, that then such Person and Persons, and his and their Heir and Heirs, shall or may, notwithstanding the said twenty Years be expired, bring his Action, or make his Entry, as he might have done before this Act; so as such Person and Persons, or his or their Heir and Heirs, shall within ten Years next after his and their full Age, Discoverture, coming of sound Mind, Enlargement out of Prison, or coming into this Realm, or Death, (3.) take Benefit of and sue forth the same, and at no Time after the said ten Years. (4.) Infants, Femes Covert, &c. excepted.

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a Period of more than twenty Years) without any Steps being taken by the Devisee to recover the Possession; it was held that the Devisee was not barred, for that he could not have entered during the Lease; and although a Forfeiture was committed, he was not obliged to enter; Doe d. Cook *v.* Danvers, 7 E. 299. See also, as to the last Point, 1 Ves. 278. The Possession on which the Statute attaches must also be adverse. A Mortgagee is not barred by the Possession of his Mortgagor, paying Interest; Lord Raym. 750; and see Keene d. Ld. Byron *v.* Dearden, 8 E. 248; Roe d. Pellatt *v.* Ferrars, 2 B. and P. 542. The Possession of one joint Tenant, Tenant in common, or Parcener, as such, does not bar the Right of Entry of the other; but if the Right of the other is denied, and the Enjoyment is adverse, the Statute attaches, such adverse Possession being in Effect an actual Ouster; see Ford *v.* Grey, 1 Salk. 285; Reading *v.* Royston, 2 Salk. 422; Fairclaim *v.* Shackleton, 3 Bur. 2604; Doe *v.* Prosser, Cowp. 217; Peaceable *v.* Read, 1 E. 568. In that Case Lord Kenyon said — "Primâ facie, the Possession of one Tenant in common is that of another; and every Case and Datum in the Books is to that Effect. But you may shew that one of them has been in Possession, and has received the Rents and Profits to his own Use, without Account to the other; and that the other has acquiesced in this for such a Length of Time as may induce a Jury to presume an actual Ouster of his Companion: and there the Line of Presumption ends."—Ecclesiastical Persons or Corporations are not generally barred by the Statutes; Magdalen College Case, 11 Rep. 786; 1 Roll Rep. 151. Where an Ecclesiastical Person neglects to bring his Action within the Time required, he himself will be barred, but not his Successor; Plowd. 358. See Stat. 4 Henry VII. c. 24, ante. Part II. Class X. No. 7, and Notes, as to Persons barred by Fine and Non-claim.

(3.) The Word *Death* must mean and refer to the Death of the Person to whom the Right first accrued, and whose Heir the Claimant is; and the Statute meant that the Heir of every Person, to which Person a Right of Entry had accrued, during any of the Disabilities should have ten Years from the Death of his Ancestor, to whom the Right first accrued after his Disability, and who died under such Disability (notwithstanding the 20 Years from the first accruing of the Title to the Ancestor should have before expired). Per Lord Ellenborough, Doe d. George *v.* Jesson, 6 E. 80—in this Case it was ruled, that the Ancestor having died seised, leaving a Son and a Daughter, Infants, and the Son having died abroad, within Age, the Daughter was not entitled to 20 Years to make her Entry, after the Death of her Brother, but only to 10 Years; more than 20 Years having in the Whole elapsed since the Death of the Father.

(4.) Where the Statute has once begun to attach, it continues to run, notwithstanding any subsequent Disability; Doe dem. Duroure *v.* Jones, 4 T. R. 300. The ten Years do not run at all while there is a Continuance of the Dis-

No. 4.
21 James I. c. 16.
The Limitation of certain Personal Actions.

III. And be it further enacted, that all Actions of Trespass *Quare clausum fregit*, all Actions of Trespass, Detinue, Action sur Trover, and Replevin for taking away of Goods and Cattle, all Actions of Account and upon the Case, other than such Accounts as concern the Trade of Merchandize between Merchant and Merchant, (5.) their Factors or Servants, all Actions of Debt grounded upon any Lending or Contract without Specialty, (6.) all Actions of Debt for Arrearages of Rent, (7.) and all Actions of Assault, Menace, Battery, Wounding and Imprisonment, or any of them, which shall be sued or brought at any Time after the End of this present Session of Parliament, shall be commenced and sued within the Time and Limitation hereafter expressed, and not after, (8.) (that is to say) the said Actions upon the Case (other than for

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abilities; but they run without Intermission from the Time that the Disabilities first cease; Cotterell *v.* Dalton, 4 Taunt. 826. In this Case it was ruled, that the Right having commenced against the elder Brother, Tenant in Tail, continued to run against the younger.

(5.) It is decided in several Cases cited Williams's (n) 2 Saund. 127, that the Statute only extends to Accounts current, and not to Accounts stated. In Cotes *v.* Harris, B. N. 149, Denison J. held, that the Clause extended only to Cases where there were mutual and reciprocal Demands between two Persons. In Cranch *v.* Kirkman, N. P. Peake 121, Lord Kenyon over-ruled the Objection that the Exception extends only to Accounts between Merchants; but Qu. as to the Correctness of that Opinion; vi. Sheerman *v.* Withers, Ch. Cas. 152; Farrington *v.* Lee, 1 Mod. 270. In Catling *v.* Skoulding, 6 T. R. 189, Lord Kenyon said, that where the Case is brought within the Exception of the Statute, the Plaintiff is not barred, though there have not been any Transaction between the Parties for more than six Years. But this was controverted in Duff *v.* the East India Company, 15 Vesey, 198; and in Barber *v.* Barber, 18 Ves. 286, it was expressly decided, that a Demand between Merchants was barred by the Statute, all Accounts having ceased six Years. See the Observations of Lord Hardwicke, in Welford *v.* Liddel, 2 Vesey, 400. It was formerly held, that the Exemption only extended to Actions of Account; but the Law is now settled to be, that it extends to Actions on the Case.— See the Cases previous to that of Duff *v.* the E. I. Comp., more fully stated; Williams's Notes to 2 Saund. 127.

(6.) The Act does not extend to Debt for not setting out Tithes; Cro. Car. 513: nor to Debt for an Escape, founded on 1 Ric. II. c. 12; 1 Saund. 38; 1 Lev. 191; 1 Sid. 306; nor to Debt on Award; semble, 1 Lev. 273; 1 Sid. 415; 2 Saund. 63: nor Debt for a copyhold Fine; 1 Lev. 273: nor an Action against a Sheriff for Money levied upon a Fi. Fa.; 3 Mod. 312.

(7.) Rent reserved by Indenture is not within the Act; Hutton, 109.

(8.) The Statute may be taken Advantage of in Actions upon Debt, upon nil debet; but in Assumpsit, and other Actions enumerated in this Section, it is necessary to plead it, although the Cause of Action upon the Face of the Declaration may appear to have been beyond the Time of Limitation. In all Cases of Assumpsit, the Plea may be, that the Action did not accrue within six Years; but where the Cause of Action arises not upon the Promise, but upon some collateral Event, it is not sufficient to plead non Assumpsit. In Assumpsit by an Executor or Administrator, upon Promises to the Deceased, if the Plaintiff replies a Promise within six Years, he cannot give in Evidence a Promise to himself; Dunne *v.* Crane, Salk. 28; Sarrell *v.* Wine, 3 East, 409. It is therefore proper, in all Cases of Doubt, to have two Sets of Counts, one upon Promises to the Deceased, the other to the Plaintiff. The Limitation attaches with Reference to the actual Commencement of the Action, and not according to the Supposition of the Record, or the Teste of the Writ. See the Cases upon Pleadings, with Reference to the Statute, Williams's n. 2 Saund. 63; and Gray *v.* Pindar, 2 B. and P. 427; Harrington *v.* Taylor, 15 E. 378; Leeper *v.* Tatton, 16 E. 420. If an Action is

No. 4. 21 James I. c. 16.

Slander) and the said Actions for Account, and the said Actions for Trespass, Debt, Detinue and Replevin for Goods or Cattle, and the said Action of Trespass *Quare clausum fregit*, within three Years next after the End of this present Session of Parliament, or within six Years next after the Cause of such Actions or Suit, and not after; and the said Actions of Trespass, of Assault, Battery, Wounding, Imprisonment, or any of them, within one Year next after the End of this present Session of Parliament, or within four (9.) Years next after the Cause of such Actions or Suit, and not after; and the said Actions upon the Case for Words, (10.) within one Year after the End of this present Session of Parliament, or within two Years next after the Words spoken, and not after.

Their Limitation after Judgment or Outlawry reversed.

IV. And nevertheless be it enacted, That if in any the said Actions or Suits, Judgment be given for the Plaintiff, and the same be reversed by Error, or a Verdict pass for the Plaintiff, and upon Matter alledged in Arrest of Judgment, the Judgment be given against the Plaintiff, that he take nothing by his Plaint, Writ or Bill, or if any the said Actions shall be brought by Original, and the Defendant therein be outlawed, and shall after reverse the Outlawry; that in all such Cases the Party Plaintiff, his Heirs, Executors (11.) or Administrators, as the Case shall require, may commence a new Action or Suit from Time to Time, within a Year after such Judgment reversed, or such Judgment given against the Plaintiff, or Outlawry reversed, and not after.

After Judgment or Nonsuit in a Quare clausum fregit, the Plaintiff is barred to renew the Suit.

V. And be it further enacted, That in all Actions of Trespass (12.) *Quare clausum fregit*, hereafter to be brought, wherein the Defendant or Defendants shall disclaim in his or their Plea, to make any Title or Claim to the Land in which the Trespass is by the Declaration supposed to be done, and the Trespass

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commenced in Time in an inferior Court, and removed by the Defendant into the King's Bench, after the Time of Limitation, whereupon the Plaintiff declares de novo, the Suit is not barred; Matthew *v.* Phillips, 2 Salk. 424.—As to Acknowledgments by which a Case is taken out of the Statute, see Note at the End of the Class, [6] [7] [8].

(9.) Where the Defendant, in Assault, pleaded not guilty within six Years, it was ruled on Demurrer that the Plea was bad: an immaterial Issue. But in Macfadzen *v.* Olivant, 6 East, 387, in which the Question arose whether Crim. Con. was ever a Trespass, and if Trespass, whether the Limitation was not four Years; it was held, that, supposing it to be Trespass, the Objection must be taken by special Demurrer, as four Years were included in six; and a Plea of not guilty within six Years, includes the Allegation of not guilty in four. In Cooke *v.* Sayer, 2 Bur. 753, a Plea of not guilty within six Years in such Case appears to have been held good; but it is only mentioned incidentally, upon a Question of Costs, and it does not appear on the Report whether the Discussion related to the Action being within the Statute in general, or upon the Distinction between six Years and four.

(10.) Where the Words are actionable without special Damage, the Statute is a Bar; secus, where special Damage is the Ground of the Action; Saunders *v.* Edwards, 1 Sid. 95; Raym. 61. The Limitation does not extend to Slander of Title; Law *v.* Harwood, Cro. Car. 141; and vi. Note 13, infra.

(11.) As to Commencement of Actions by Executors, see General Note at the End of the Title, [4].

(12.) This does not apply to Trespass for taking Goods; Bailee *v.* Vivash, 1 Str. 549.

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No. 4. 21 James I. c. 16.

be by Negligence or involuntary, the Defendant or Defendants shall be admitted to plead a Disclaimer, and that the Trespass was by Negligence or involuntary, and a Tender or Offer of sufficient Amends for such Trespass before the Action brought, whereupon or upon some of them the Plaintiff or Plaintiffs shall be enforced to join Issue; and if the said Issue be found for the Defendant or Defendants, or the Plaintiff or Plaintiffs shall be nonsuited, the Plaintiff or Plaintiffs shall be clearly barred from the said Action or Actions, and all other Suits concerning the same.

In Actions of Slander under 40s. the Plaintiff shall recover no greater Costs than Damages.

VI. And be it further enacted by the Authority aforesaid, That in all Actions upon the Case for slanderous Words, to be sued or prosecuted by any Person or Persons in any the Courts of Record at *Westminster*, or in any Courts whatsoever that hath Power to hold Plea of the same, after the End of this present Session of Parliament, if the Jury upon the Trial of the Issue in such Action, or the Jury that shall enquire of the Damages, do find or assess the Damages under forty Shillings, then the Plaintiff or Plaintiffs in such Action shall have and recover only so much Costs as the Damages (13.) so given or assessed amount unto, without any further increase of the same; any Law, Statute, Custom or Usage to the contrary in any wise notwithstanding.

Infants, Femes Covert, &c. excepted.

VII. Provided nevertheless, and be it further enacted, That if any Person or Persons that is or shall be entituled to any such Action of Trespass, Detinue, Action sur Trover, Replevin, Actions of Accounts, Actions of Debts, Actions of Trespass for Assault, Menace, Battery, Wounding or Imprisonment, Actions upon the Case for Words, be or shall be at the Time of any such Cause of Action given or accrued, fallen or come, within the Age of twenty-one Years, *Feme Covert, Non compos mentis*, imprisoned or beyond the Seas; that then such Person or Persons shall be at liberty to bring the same Actions, so as they take the same within such Times as are before limited, after their coming to or being of full Age, Discovert, of sane Memory, at large, and returned from beyond the Seas, as other Persons having no such Impediment should have done. 20 H. 3. c. 8. 3 E. 1. c. 39. 32 H. 8. c. 2. 1 M. Sess. 2. c. 5.

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(13.) The Provision does not extend to Libels; Salk. 207: nor to Words not actionable in themselves, and where the Action is only maintainable on Account of special Damage; Brown *v.* Gibbons, Salk. 206; Bass *v.* Hickford, Anders. 375: nor when, though the Words are actionable, there is a substantial Injury, which, independently of the Words, would be a Ground of Action; as that the Plaintiff, by Occasion of the Words, through the Procurement of the Defendant, was imprisoned; Carter *v.* Fish, 1 Str. 645. But where the Words are themselves actionable, special Damage does not take the Case out of the Statute; Bury *v.* Perry, 2 Ld. Raym. 1588; Turner *v.* Horton, Barnes 138; Willes 438; Surman *v.* Shelleto, 3 Bur. 1688; Collier *v.* Gaillard, 2 Bl. 1062. On a general Verdict for the Plaintiff, where some Counts are for Words actionable in themselves, and others only on account of special Damage, full Costs are given; Saville *v.* Jardine, 2 H. B. 531. So where the Action is removed by the Defendant from an inferior Court; Littlewood *v.* Smith, 1 Ld. Raym. 181. The Statute applies to Judgments by Default; and a Judgment for 1s. Damages and £13 Costs was reversed in toto; Lamper *v.* Hatch, 2 Str. 934; to Cases where there is a Plea of Justification; Halford *v.* Smith, 4 E. 567.

## No. 5.

**10 and 11 William III. c. 14.—An Act for limiting certain Times, within which Writs of Error shall be brought for the reversing Fines, Common Recoveries and Ancient Judgments.**

[See post. Title *Error.*]

## No. 6.

**4 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice.** P.

[Inserted at length Pt. II. Cl. I. No. 23.]

XVII. AND be it further enacted by the Authority aforesaid, That all Suits and Actions in the Court of Admiralty for Seamen's Wages, which shall become due after the said first Day of *Trinity* Term, shall be commenced and sued within six Years next after the Cause of such Suits or Actions shall accrue, and not after. No. 6. 4 Anne, c. 16. Seamen's Wages.

XVIII. Provided nevertheless, and be it further enacted, That if any Person or Persons, who is or shall be entitled to any such Suit or Action for Seamen's Wages, be or shall be, at the Time of any such Cause of Suit or Action accrued, fallen or come, within the Age of twenty-one Years, Feme Covert, *Non Compos Mentis*, imprisoned or beyond the Seas, that then such Person or Persons shall be at liberty to bring the same Actions, so as they take the same within six Years next after their coming to or being of full Age, Discovert, of sane Memory, at large, and returned from beyond the Seas. Proviso in case of Nonage, Feme Covert, or Non Compos Mentis, &c.

XIX. And be it further enacted by the Authority aforesaid, That if any Person or Persons against whom there is or shall be any such Cause of Suit or Action for Seamen's Wages, or against whom there shall be any Cause of Action of Trespass, Detinue, Actions sur Trover, or Replevin for taking away Goods or Cattle, or of Action of Account, or upon the Case, or of Debt grounded upon any Lending or Contract without Specialty, of Debt for Arrearages of Rent, or Assault, Menace, Battery, Wounding and Imprisonment, or any of them, be or shall be, at the Time of any such Cause of Suit or Action given or accrued, fallen or come, beyond the Seas; that then such Person or Persons, who is or shall be entitled to any such Suit or Action, shall be at liberty to bring the said Actions against such Person and Persons, after their Return from beyond the Seas, so as they take the same after their Return from beyond the Seas, within such Times as are respectively limited for the bringing of the said Actions before by this Act, and by the said other Act made in the one and twentieth Year of the Reign of King *James* the First. Action against Persons gone beyond the Seas, may be brought after their Return. Proviso. 21 Jac I., c. 16.

## No. 7.

9 Geo. III. c. 16.—An Act to amend and render more effectual an Act made in the twenty-first Year of the Reign of King *James* the First, intituled, "An Act for the general Quiet of the Subjects against all Pretences of Concealment whatsoever."

[Inserted Pt. II. Cl. XII. No. 30.]

The following general View of the

### STATUTES OF LIMITATIONS, AND PRESUMPTIONS FOUNDED UPON LENGTH OF TIME,

was originally published in the Appendix to the Translation of Pothier. The Additions are, as in other Instances, distinguished by Brackets; and the additional Notes are further distinguished from the original ones by the References being in Figures.

[1] "In stating the English Law respecting Limitations, and Presumptions founded upon Length of Time, I shall 1st advert to the Provision respecting ordinary Debts; 2d, (deviating from my usual Plan, which does not embrace the Law of real Estates) to the Case of Ejectments; and 3d, to those Cases in which, without any Legislative Provision, the Courts of Justice have adopted Rules, analogous to those constituted by Statute; without dwelling upon Actions for Injuries, or Provisions of a special and particular Nature.

"By Statute 21 Jac. I. Ch. 16. § 3. all Actions of Account, and upon the Case, other than such Accounts as concern the Trade of Merchandize, between Merchant and Merchant, their Factors or Servants, all Actions of Debt grounded on any lending, or Contract without Specialty, and all Actions of Debt for Arrearages of Rent, shall be commenced within six Years after the Cause of Action.

"By the same Section, Actions of Trespass, *Detinue* and *Replevin*, must be commenced within six Years; Actions of Assault, Battery, Wounding, and Imprisonment, within four Years; and Actions of Slander, within two Years.

"By § 4. if Judgment is given for the Plaintiff, and afterwards reversed by a Writ of Error, or arrested; or if the Defendant is outlawed, and the Outlawry reversed, a new Action may, from Time to Time, be commenced within a Year afterwards.

"And by § 7. if any Person entitled to any such Cause of Trespass, *Detinue*, Action for Trover, Replevin, Actions of Accounts, Actions of Debts, Actions of Trespass for Assault, Menace, Battery, Wounding, or Imprisonment, Actions upon the Case for Words, at the Time of the Cause of Action accruing, shall be under the Age of twenty-one Years, *Feme covert*, *Non compos mentis*, imprisoned, or beyond Seas, such Persons shall be at Liberty to bring the Actions within the Time before limited, after being of full Age, discovert, of sane Memory, at large, and returned from beyond Seas, as other Persons not having the same Impediments should have done.

"And by 4 and 5 Ann. c. 16. where any Persons, against whom there is Cause of Action, shall be beyond Sea at the Time of such Cause of Action accruing, the Persons who shall have such Cause of Action, shall have Liberty to bring an Action within such Times as are limited by the Statute of James, after their Return.

[2] "I. The Principle stated by Pothier, that Prescription cannot begin to run, but from the Time when the Creditor might institute his Demand, is included in the very Terms of the Statute, so that if Credit is given, or if a Debt is contracted upon Condition, it is manifest that no Cause of Action can arise until the Credit is expired, or the Condition performed, and conse-

quently that before those Periods the Time of Limitation cannot commence. When the Defendant received Money belonging to an Intestate's Estate, it was held that the Limitation only commenced from the Time of Administration being granted; for until that Time there was no Person entitled to receive the Money; Carey *v.* Stephenson, 2 Salk. 421; see Wittershiem *v.* the Countess of Carlisle, 1 H. Bl. 601.

" I am not aware of any Case in which the Subject of a Contract, including several distinct Times of Payment, has fallen under Consideration. To such a Case the Terms of the Statute may be literally applied, so as to run for each Portion from the respective Times of Payment; and I see no Ground upon which the Operation of it can be prevented, though, under these Circumstances, the Courts would in all Probability be peculiarly disposed to favour every Implication of an Acknowledgment, extended to the Time appointed for the latest Payment.

" Where there are mutual Accounts between the Parties, an Acknowledgment will be implied at the Time of the last Transaction: this will be more particularly mentioned presently. But the particular Exception in the Statute of Accounts, between Merchant and Merchant, seems to have a more extensive Effect; for it has been held that to such Cases the Statute does not at all attach, and therefore where the Cause of Action is brought within that Exception, no Length of Time can be alleged as a Bar to the Demand; Catling *v.* Skoulding, 6 T. R. 191 *(a)*. [But this Doctrine has been since over-ruled; see Notes in the Statute.] This Exception is clearly confined to the Case of mutual Accounts and reciprocal Demands between two Persons in Trade, and does not extend to Cases between a Tradesman and his Customers, for these are not Merchant's Accounts; Bul. N. P. 149.

" The Continuance of a mutual Account of Debts and Credits is held sufficient Evidence of an Acknowledgment: for, where an Action was brought for several Years' Rent, and the Tenant had supplied his Landlord with Shop-goods during the latter Period of the Tenancy, it was held that the Statute did not apply. Lord Kenyon said, " Here are mutual Items of Account, and I take it to be clearly settled, as long as I have any Memory, that every new Item and Credit in Account, given by one Party to the other, is an Admission of there being some unsettled Account between them, the Amount of which is afterwards to be ascertained; and any Act which the Jury may consider as an Acknowledgment of its being an open Account, is sufficient to take the Case out of the Statute." Where all the Articles are on one Side, it seems, according to a Case cited by his Lordship, and decided by Mr. Justice Dennison, that the last Item, which happens to be within six Years, shall not draw after it those that are of longer standing; Catling *v.* Skoulding, ub. sup.

[3] " In the exceptive Clause of Persons under certain Protections, most of the Causes of Action before enumerated are repeated; but the Clause does not mention Actions on the Case generally, but only Actions on the Case for Words. It has however been decided to have a general Application, and to include the common Action upon Promises, for Recovery of Debts; Actions of Debt are included in the Enumeration; and though there is a casual Omission of Expression in the excepting Clause, it is impossible to suppose that this Exception was intended to apply only partially in respect of the Objects mentioned in the general Purview; Vide Rochtschilt *v.* Leibman, 2 Str. 836.

" Upon the Effect of the Exception as to Persons beyond Seas, it has been observed by the Court of Common Pleas, that if the Plaintiff is a Foreigner, and doth not come to England in fifty Years, he has still six Years after his coming to England to bring his Action; and if he never comes to England himself, he has always a Right of Action whilst he lives abroad, and so have his Executors or Administrators after his Death. An Infant may sue before he comes of Age, if he pleases; but if he does not, he has six Years after he comes of Age to bring his Action. While any of the Disabilities mentioned in the Statute of Limitations continue, the Party may, but is not obliged, to bring his Action; Stathorst *v.* Græme, 3 Wils. 145. It has been also decided, that if some of the Persons, having a joint Cause of Action, are in the Kingdom, and others beyond Seas, the Statute attaches as if they had all been in the Kingdom; Perry *v.* Jackson, 4 T. R. 516. The Term *beyond Seas* is

(a) Vide several Cases cited, Williams's Notes to p. 2, Saund. 127.

strictly construed, and the Exception is not allowed to extend to a Person in Scotland; King *v.* Walker, 1 Bl. Rep. 286.

[4] " In case six Years have not elapsed at the Time of the Creditor's Death, the Executor is allowed to commence an Action after the Expiration of six Years, provided he does so within one Year after the Death of his Testator. This is said to be by the Equity of the Clause, which gives a Year to commence a new Action, in case the first Judgment has been arrested or reversed; Bul. N. P. 150; Wilcock *v.* Huggins, 2 Str. 907. However reasonable it may be to allow such an Exception, it is not very obvious how any Inference to that Effect can be drawn from the Clause to which it is referred. (1.)

[5] " It is a Rule fully established, that when the Time required by any Statute of Limitations has begun to run, it shall continue, notwithstanding the Party entitled afterwards falls under any of the Protections, or, as they are usually called, Disabilities: for Instance, if a Woman marries the Day she comes of Age, or a Person is thrown into Prison the Day after his Arrival in the Kingdom, the Time will run without Interruption, from the Time of coming of Age, or of the Arrival. If it has commenced against the Ancestor, it will continue against his infant Heirs. A Distinction was lately endeavoured to be taken between a voluntary Disability, such as Marriage, and one which was involuntary, such as Imprisonment; but this was not allowed; Doe *v.* Jones, 4 T. R. 300; Smith *v.* Hill, 1 Wils. 134. (2.)

[6] " According to the modern Determinations of English Courts, the Admission of a Debt has a more extensive Effect than that which is stated by Pothier; for it is now an established Rule, the Application of which is of daily Experience, that the slightest Acknowledgment of the Obligation not having been discharged, is sufficient not only to interrupt the Operation of the Statute, but to revive from that Time the Right of Action, which was extinct.

" Cases have occurred, in which a Person, by mentioning in Conversation that he had contracted a Debt, but should not pay it, as it was of above six Years' standing, or by declaring at the Time of his being served with Process, that he should on that Account resist the Payment, has deprived himself of that Right, upon which it was his Intention to insist.

" What Acts or Declarations constitute an Acknowledgment, is a Question of Fact; it was therefore ruled, that a Judge ought to have submitted the Effect of a Letter, couched in Terms of Ambiguity and Evasion, to the Decision of a Jury, instead of deciding upon the Insufficiency of it, of his own Authority; Lloyd *v.* Maund, 2 T. R. 760.

" A Distinction prevails between such an Act as shall prevent the Operation of the Statute of Limitations, and such as shall repel the Defence of an Obligation being contracted during Minority. In the first Case, a mere Admission that the Debt remains undischarged is sufficient; in the second, there must be an actual Promise. And the Distinction is not without Foundation; for, in the first Case, the Obligation is founded upon the Fact, the Length of Time operates as a Defeazance, and the Admission furnishes Evidence, that the Presumption, which was the Cause of providing a Bar, is contrary to the Fact. In the other Case, there is no legal Obligation in the first Instance; there is only a moral Obligation, which may be a sufficient Consideration to support an actual Promise. The mere Acknowledgment of such moral Ob-

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[(1.) See the Discussion on this Subject in Mr. Selwyn's Note, in his Abridgment of the Law of Nisi Prius, pa. 133, 3d. Edition. From the Cases which he cites, he seems to intimate, that the only Rule which can be laid down with Safety is, that the Executor must bring his Action within a reasonable Time. But upon examining the Cases cited themselves, I do not find it clearly ascertained, that in any Instance an Action has been allowed to be commenced in the first Instance, by an Executor or Administrator, after the proper Time of Limitation has expired; and if not, all the Cases in which that Right has been recognized resolve themselves into mere Dicta. In Kensey *v.* Heywood, 1 Lutw. 260, the Action was commenced by the Deceased within the six Years, and abated by his Death; and a new Original was taken out by the Executor within the following Term, which was held to bring the Case within the Equity of the Statute, as a Continuance of the original Action.]

[(2.) And see Doe *v.* Jesson, 6 E. 80; Cotterell *v.* Dutton, 4 Taunt. 826; both cited in Notes to Stat. 21 Jac. c. 16.]

ligation can have no legal Effect; an actual Intention to assume a personal Responsibility is the only Foundation of a legal Demand, and that Intention must be manifested by Acts or Declarations inconsistent with the contrary Disposition.

[7] "The Effect of the Statute is confined to a Right of Action, it is not to collateral Purposes regarded as an Extinction of the Debt; therefore, if a Person by Will directs his Debts to be paid, those which were barred by the Statute are held to be included. [This Doctrine is taken for granted in many Cases, and was generally supposed to be the established Rule of Courts of Equity; but in Burke *v.* Jones, 2 V. and B. 275, the Vice-Chancellor, upon a full Review of the Authorities, decided the contrary; and said, that there was no Decision that a Devise for the Payment of Debts had the Effect of reviving Debts barred by the Statute at the Death of the Devisor.]

"Neither is a Creditor, whose Debt is barred by the Statute, precluded from taking out a Commission of Bankrupt, at least, unless the Objection is taken by the Bankrupt himself; Quantock *v.* England, 5 Bur.: and even in that Case, I have known the Argument, in support of the opposite Proposition, disallowed (*a*). And it is clearly no Objection to the Proof of a Debt, under a Commission, that it was contracted above six Years before the Commission issued. [This was generally understood to be the Law at the Time when the present Discussion was published; but the contrary has been since ruled in the Cases, Ex parte Dewdney, 15 Ves. 479; and the Dividends paid on such Proof were ordered to be refunded; S. C. 2 Rose, B. L. 59, n.—See the Discussion on this Subject, 1 Christ. B. L. 221.]

[8] "A partial Payment by one of the Drawers of a joint and several promissory Note, was held to be a sufficient Acknowledgment to prevent the Operation of the Statute in favour of the others; Whitcomb *v.* Whiting, Doug. 652. And I conceive it may be stated generally, that an Acknowledgment, in whatever Manner, by one of several joint Debtors, shall be obligatory upon all, and that the Distinction between such Acknowledgment being made within, or after the Period of Limitation, would not be allowed.

"It has been decided, that where one joint Debtor became a Bankrupt, the Payment of a Dividend by his Assignees should operate as an Acknowledgment to effect the other; Jackson *v.* Fairbank, 2 H. Bl. 340. This was certainly carrying the Matter to the furthest possible Extent; for the Right to prove upon the Estate was not affected by the Statute of Limitations, and could not have been resisted by the Assignees.

"By the several Decisions which have taken place, the Effect of the Statute of Limitations seems to be almost reduced to a mere Matter of presumptive Evidence. (3.) However conformable such a Course of Proceeding may be to original Principles, which render it expedient to fix a Limitation of Time, it might be justly questioned, whether any Thing less than an Acknowledgment, intended to import the Subsistence of a valid Obligation, should be allowed to satisfy the true Construction of the Statute (*b*).

"(*a*) Upon applying for the Rule to shew Cause why there should not be a new Trial in the Case of Glaister *v.* Hewes, reported on another Point, 7 T. R. 498."

[(3.) In Leaper *v.* Tatton, 16 E. 420, Lord Ellenborough says—"The Limitation of the Statute is only presumptive Payment. If the Defendant's own Acknowledgment that he has not paid be shewn, it does away the Statute." See also a Point of Pleading in that Case.]

"(*b*) It is several Years since these Observations have been committed to Writing. By a very recent Decision, it was established, that saying, "I do not consider myself as owing Mr. B. a Farthing; it being more than six Years since I contracted: I had the Goods, and paid Part, and £26 remains due," was an Acknowledgment which took the Debt out of the Statute. The Court said, that whatever their Opinion upon the Statute might have been, had the Question been new, yet after the long Train of Decisions upon the Subject, it was necessary to abide by the Construction which had been put upon it; in Conformity with which they thought themselves bound to hold that what was said by the Defendant was sufficient Acknowledgment of the preexisting Debt, to create an Assumpsit, so as to take the Case out of the Statute; Bryan *v.* Horseman, 4 East, 599. This Decision was certainly in Conformity with the Series of Precedents upon the Subject; but as to the general

"It may not be improper here to hint, that considerable Caution should be applied to the Evidence of Persons brought to prove a mere verbal Acknowledgment. Those Persons are often selected to apply to the Party charged as Debtor, on account of their Cunning in catching at any ambiguous Expression, and in representing the Case most favourably for those by whom they are employed. To this it may be added, that such Evidence is seldom exposed to the temporal Risks which attend the Commission of Perjury (*a*).

[9] "It has been argued, that where a Party has been induced, by Fraud, to pay Money, the Statute of Limitations does not run, or at least only runs from the Time when the Fraud is discovered; but the Allegations in the particular Case were deemed not sufficient to raise the Question; Bree *v.* Holbeach, Doug. 655. I can, however, hardly think that the Argument is tenable. Courts of Equity have, in the Exercise of that discretionary Power which they are allowed to possess, adopted an Analogy to the Statute of Limitations, with an Exception in Cases of Fraud; and it seems from thence to be inferred, that the Courts of Law must adopt, in the Construction of the Statute, an Exception analogous to that of the Courts of Equity. But the Exposition of a Statute is imperative, and not discretionary; and to qualify the express Provisions of an Act, by Exceptions deduced from its supposed Spirit, however conducive to the Justice of particular Cases, is a most alarming Precedent. Besides, the Ground of introducing a Period of Limitations is the Lapse of Memory, and the Loss of Evidence. A Transaction, which, when explained, is perfectly fair, may be attended with Circumstances of a fraudulent Aspect, and it would be unjust to let those Circumstances induce a

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Precedent of adhering to the mere Authority of former Cases, in Opposition to the positive Terms of an Act of Parliament, or an established Maxim of Law, of placing a secondary above a primary Authority, much Doubt may fairly, and without Disrespect, be entertained. Where the Return to the ancient Principle would be attended with material Detriment, as by disturbing Titles to real Estates, held under the Sanction of Rules, which, however erroneous in themselves, have been established by a Series of Precedents, the Reason for an Adherence to the Precedents evidently preponderates; but where there will be no Inconvenience beyond the immediate Case, where the general Consequences will be wholly prospective, I cannot but adhere to the Opinion, (which I have perhaps expressed with obtrusive Repetition) that the Courts of Justice have as much Authority now to restore the Law, as they have had before to subvert it; and that a correct Principle of Law is an Authority entitled to higher Respect than an erroneous Set of Precedents. Considering the Law, however, on the particular Subject, as now beyond the Reach of Argument, and aware how much my own Opinion upon the Effect of Precedent is different from that which usually prevails in Practice, I think it not irrelevant to suggest to Persons whose Claims are barred by the Statute, and who wish to obtain an Acknowledgment of the Subsistence of the Debt, the Utility of filing a Bill of Discovery, obliging the Defendant to state whether the Debt was contracted, and whether it has been paid. If the Subsistence of the Debt is admitted, (and without Perjury it cannot be denied) it will not, if there is any Consistency of Decision, be of any Avail to add a Claim to the Protection of the Statute." [Vi., as to pleading the Statute in such Case, post. [22]. In Cobham *v.* Marsh, 3 Taunt. 380, it was ruled that saying, "I owe you not a Farthing; for it is more than six Years since," could not be left to the Jury as an Acknowledgment; and vi. Birchall *v.* Keppel, 1 New Rep. 20. In the subsequent Case of Leaper *v.* Tatton, referred to in N. to [8], ante, the Defendant saying "that he had been liable, but was not liable then, because the Bill was out of Date," was ruled to be an Acknowledgment, taking the Case out of the Statute.—It seems quite impossible to reconcile these Cases. See Baillie *v.* Sibbald, 15 Ves. 185.]

"(*a*) Mr. Serjeant Williams observes to the same Effect, that it might perhaps have been as well if the Letter of the Statute had been strictly adhered to; it is an extremely beneficial Law, on which, as has been observed, 2 Salk. 421, Green, *v.* Rever, the Security of all Men depends, and is therefore to be favoured; and although it will now and then prevent a Man from recovering an honest Debt, yet it is his own Fault that he postponed his Action so long; besides which, the permitting of Evidence of Promises and Acknowledgments, within the six Years, seems to be a dangerous Inlet to Perjury."

Claim, where the Evidence, capable of affording an Explanation, is lost. The Qualification deduced from the Time of discovering the Fraud, would be attended with continual Uncertainty; for Circumstances may appear to give a Man the first Discovery of a Fact, with which he has been long acquainted, but the Knowledge of which rests in his own Mind.

[10] "There is another Rule in Courts of Equity, which may deserve a different Consideration, as applied to legal Demands, viz., that Length of Time is no Bar in the Case of a *Trust*. Where a Man deposits Money in the Hands of another, to be kept for his Use, the Possession of the Custodee ought to be deemed the Possession of the Owner, until an Application and Refusal, or other Denial of the Right; for, until then there is nothing adverse, and I conceive that upon Principle, no Action should be allowed in these Cases, without a previous Demand; consequently, that no Limitation should be computed further back than such Demand. And I think it probable, that under these Circumstances, the Limitation would not be allowed to attach, though the other Part of the Observation would be as probably disallowed; for a sweeping Rule has been by some means introduced into Practice, that an Action is a Demand; whereas every Action in its Nature supposes a preceding Default: where Money is improperly received, or Goods are bought without any specific Credit, or even where Money is borrowed generally, there is held to be an immediate Duty, and it is a perfectly legitimate Conclusion, that no Demand can be necessary, in Addition to the Duty itself. But wherever there is a Loan, in the Nature of a Deposit, or any other confidential Duty is contracted, the mere Creation of that Duty, unaccompanied with the absolute Breach of it, by Denial, or inconsistent Conduct, ought not to be considered as a Ground of Action.

[11] "The Commencement of an Action within the six Years, of course prevents the Statute of Limitations having Effect. There are many Cases upon the Subject, the Result of which is, that the actual Day of commencing the Action is the Time to be considered, without Regard to those fictitious Relations, which, for general Purposes, are deemed the Commencement of the Suit, and that the Suit so commenced must be that which is effectively proceeded in.

[12.] "II. By the same Statute of 21 Jac. I. c. 16, no Person shall make Entry into any Lands, but within twenty Years after his Right shall first descend, or accrue; but in case the Persons entitled shall be at the Time of such Right first descended, or accrued, within the Age of twenty-one Years, *Feme covert*, *Non compos mentis*, or beyond the Seas, such Persons, or their Heirs, may make an Entry as before the Act, so as they take the Benefit of the Act within ten Years after the Disability removed. The Right of Entry is essential to the Maintenance of an Action of Ejectment, which is now the almost invariable Course of Proceeding for the Recovery of Lands.

"Writs of Right may be sued out within sixty Years, which is the longest Period of Limitation allowed by Law, with the like Exceptions as to Infants, &c.

{The present Limitation of sixty Years has a considerable Effect in raising Difficulties to Titles, while it has very little Effect in the actual Preservation of Rights, as it is scarcely once in a Year that any real Action is brought, and when brought is so little countenanced, that every Difficulty and Embarrassment is thrown in the Way of it: and in this, as in all other Cases, it would seem manifestly inconsistent to admit the Existence of a Law as beneficial, while the Application of it is uniformly discountenanced as injurious. The usual Exceptions are also rather Difficulties in the Way of the Title, than Matters of any real, practical Utility; and on the general Scale of public Advantage, the Balance seems evidently to be in Favour rather of letting a complete Title be acquired by a peaceable Possession of twenty Years, than of letting a Person come from beyond Sea to disturb such Title at any indefinite Distance of Time. So with respect to Coverture; the Husband has so great an Interest in the Acquisition of the Property of his Wife, that it is very rarely indeed that any Action is brought in which Advantage is taken of the Exception; and the Instances of Persons being imprisoned for a Length of Time, which would affect the Principle of Limitation, are so very few, that any particular Advantage which could arise from the Preservation of their Rights would be much inferior, with reference to the general Scale of public Utility, to the common Advantage of rendering Titles secure after the proposed Period of Limitation. The Term *Disabilities*, which is used as denoting the several Cases of Persons who

are excepted from the Statutes of Limitations, is in some Degree calculated to mislead, as there is no Disability in Point of Law; and Inability with respect to Expence is not of itself a Protection from the general Operation of the Statutes. The Exception of the Rights of Infants is of a more favourable Nature, and has the Advantage of being confined to a definite Period; but even this Case appears to be sufficiently protected by the Regulation of the Statute of 21 Jac. I.]

"In case of a Fine with Proclamations, all Persons are barred after five Years from the levying of the Fine, except Persons under Disability, and Persons whose Right shall accrue after Proclamation, who must proceed within five Years after the Disability is removed, or the Right accrues; 4 H. 7. c. 24. (4.)

"By 9 Geo. 3, c. 16, the King (who is not bound by general Acts of Parliament) is precluded from claiming any Lands, &c. except within sixty Years after the Title accrued.

[13] "The Effect of the Statute of Limitations in respect to Ejectments, is different from that which is applied to it in case of Debts, whereby, as we have seen, it is reduced to little more than a mere Presumption. For a Possession of twenty Years gives an actual possessory Title, which may be made the substantive Ground of a Claim, without being subject to any Defeazance, by Evidence of an anterior and adverse Right; Taylor *v.* Atkins, 1 Bur. 119.

"So, a Possession of sixty Years or of five Years, after levying a Fine, is not only a Bar to any judicial Proceeding, but a complete and substantive Title, subject to the several Exceptions which are introduced in Favour of Persons under Age, or having other Protections and Disabilities.

"In order to sustain an Ejectment, there must therefore have been an actual Possession, consistent with the Title claimed, within twenty Years; and Acts which merely prove a Property, but not a Possession, are insufficient.

[14] "But the Statute of Limitations can only operate in case of an adverse Possession; therefore, if one Person has held the Estate on the joint Account of himself and another, or by the Permission of the Person really entitled, and without claiming any inconsistent Right, the original Title is not affected. Whether the Possession of one Person is adverse to, or consistent with the Title of another, is, in every Case, a Question of Fact, to be collected by a Jury, from all the Circumstances; see Doe *v.* Prosser, Cowp. 217; Page *v.* Selby, Bul. N. P. 102, and Notes to 21 Jac. I.

"The Observation, that if the Statute has once begun to operate, it continues to run, notwithstanding any subsequent Disability, has already been mentioned, and this Rule has been more frequently applied to the Case of Titles than of Contracts.

[15] "We have seen that, according to the Civil Law, a Prescription, which began against the Heir, continued against the Substitute. In the Law of England, I take it to be clear, that the contrary is the Case, and that no Laches of the Tenant for Life, or in Tail, can operate against those who are entitled in Remainder, unless the adverse Possession was paramount to that of the Person from whom the several Claims are derived. Such indeed is the literal Construction of the Act, and the Application of it, in Practice, is perfectly familiar.

"But the Laches of the Tenant in Tail falls upon his Issue, claiming under the same Limitation. [And by Cotterell *v.* Dutton, 4 Taunt. 426, the Laches of the elder Brother, upon whom the Right first descends, bars the Right of the younger.]

[16] "III. The Utility of fixing a Period of Time, after which, Rights that have not been asserted, or acknowledged, shall be considered as extinct, has induced the Courts of Justice, in many Instances, to follow the Example of the Legislature, and to adopt a Limitation of Time, which shall be conclusive, for the Bar of a Claim, or the Protection of a possessory Enjoyment. And the Period adopted for this Purpose is almost invariably twenty Years.

"The present View of the Subject does not extend to those Cases in which the Lapse of Time is merely considered as a Matter of circumstantial Evidence; and as such, is either alone, or in conjunction with other Circumstances, relied upon as material in respect of an individual Case. The Effect of it in this Point of View may fairly vary according to the different Impressions of those to whom the Decision of Questions of Fact properly belongs, and is perfectly distinct from the Application of a general Rule of Presumption.

[(4.) See this Statute, with Notes, P. 2, Class 10, No. 7.]

[17] " The Statute of Limitations, as we have seen, only extends to Actions of Debt, founded upon any Loan or Contract, without Specialty. This, of Course, excludes Bonds and all Debts secured by Deed; but it is now an established Rule, that after a Lapse of twenty Years, without Payment of Interest, or other Acknowledgment, Payment shall be presumed. And though this is only a Circumstance for the Jury to found a Presumption upon, as it is a Presumption universally applied, it is in a great Measure attended with the same Effect as an absolute Bar. (5.)

" A smaller Period of Time may, in conjunction with other Circumstances, such as settling another Account in the intermediate Time, without taking Notice of the particular Demand, be sufficient to induce a Presumption in the particular Case; but any Consideration of that Kind falls within the Distinction above referred to; vide Oswald *v.* Leigh, 1 T. R. 270.

" It is a general Rule, that a Person shall not be allowed to make Evidence for himself: but it has been held that an Indorsement of the Payment of Interest upon a Bond, made ten Years before the Presumption attached, ought to be left to the Jury to decide, whether it was made with the Privity of the Obligor; on the other Hand, where the Indorsement was made after the Expiration of twenty Years, the Evidence was rejected as inadmissible, and the Chief Justice took the Distinction (manifestly founded in Reason and good Sense), that in the preceding Case the Indorsement was admitted, because it appeared to have been made at a Time when it could not have been thought necessary to encounter the Presumption; Searle *v.* Lord Barrington, 2 Str. 826; 2 Lord Raym. 1370; Tamer *v.* Crisp, 2 Str. 827.

[18] " Our Courts of Equity have, in most Instances, adopted the Presumption of a Demand having been satisfied, or a Right extinguished, after the Lapse of twenty Years, provided there are no intermediate Acts, by which that Presumption is repelled. The most common Application of this Principle is, that after a Person, to whom an Estate has been conveyed by Way of Mortgage, has been twenty Years in Possession, without rendering any Account, the Equity of Redemption shall be held to have been released or abandoned; but if there are any Acts within the twenty Years, admitting the relative Characters of Mortgagor and Mortgagee, (6.) the Presumption is destroyed, and the Time can only be computed from the last Act, which is indicative of such an Admission.

[19] " It is a Maxim in Equity, that no Length of Time is a Bar in Cases of Fraud: where the fraudulent Act is clear and manifest, the Application of this Rule is perfectly proper and consistent with the discretionary Powers of a Court of Equity; but where the Fraud is to be inferred from a Complication of Facts, and the Delay in adducing the Charge is not satisfactorily accounted for, it may be right to reflect upon the Principles, on account of which any Limitation is introduced, and which principally regard the Difficulty of accounting for the Particulars of Transactions obliterated from the Memory, and of which the Witnesses may be dead or dispersed. This Topic occurred in the Case of Deloraine *v.* Brown, 3 Bro. Ch. 633, which was decided upon a collateral Point; but the Master of the Rolls, in a subsequent Case, said he referred to the Arguments of Counsel to shew that, even in a Case of gross Fraud, the Court does not do Justice, by decreeing an Account, after a considerable Length of Time, against Executors, Legatees, and innocent Persons claiming under the fraudulent Party; vide 2 Ves. J. 92, Hercy *v.* Dinwoody. (7.)

[(5.) By the Irish Statute, 8 Geo. I. c. 4, s. 2, Debts due by Single Bill, Bond, Judgment, &c., are expressly barred at the End of 20 Years, unless there has been Payment of Interest, or other Satisfaction on Account thereof, within that Time; see 2 Gabbett, 224. Whether such a Debt can be revived by a subsequent Promise or Acknowledgment, Q.; and vi. Maddock *v.* Bond, Ir. T. R. 332; Barrington *v.* O'Brian, 1 Ball. and B. 173.]

[(6.) See, upon this Subject, Hodle *v.* Healey. 1 V. and B. 539; Whiting *v.* White, Coop. 1; Reeks *v.* Postlethwaite, Coop. 161; Perry *v.* Marston, n. ibid.; Barron *v.* Marten, Coop. 189.]

[(7.) And see Smith *v.* Day, 3 Bro. Ch. 630; Hovenden *v.* Lord Annesley, 2 S. and L. 630; Bond *v.* Hopkins, 1 S. and L. 428; Medlicot *v.* O'Donel, 1 Ball and Beatty, 156; and the Cases mentioned in the next Note.]

[20] "It is also held, that no Length of Time shall operate as a Bar in Cases of Trust; but this Rule can only be applied between the Trustee and the Party interested in the Execution of the Trust, and cannot be opposed to the Right of a third Person claiming in Opposition to both; (8.) and even as between the immediate Parties, where the Trust relates to some Act of an evanescent Nature, such as the Payment of a Sum of Money, and not to any permanent Interest, the Length of Time may be fairly regarded as Evidence of Performance.

[21] "The following recent Cases will shew, in a clear Point of View, the Regard paid by a Court of Equity to Length of Time in general, with the Disregard of that Circumstance, where the Inconvenience which might otherwise arise was fully obviated.

"A Suit was instituted for a Legacy, which was resisted on the Ground of presumed Payment, arising from the Length of Time (being above forty Years) which had elapsed without any Demand, and because all the Persons who could throw Light upon the Question were dead, and the Claim was disallowed. Lord Commissioner Eyre observed, that it is a Presumption of Fact, in legal Proceedings, before Juries, that Claims, the most solemnly established upon the Face of them, will be presumed to be satisfied after a certain Length of Time. Courts of Equity would do very ill by not adopting that Rule. So essential is it to general Justice, that though the Presumption has often happened to be against the Truth of the Fact, yet it is better, for the Ends of general Justice, that the Presumption should be made and favoured, and not be easily rebutted, than to let in slight Evidence of Demands of this Nature, from which infinite Mischief and Injustice might arise. If he could indulge Conjecture, he doubted about the Payment of the Legacy; he knew that in Wales there is a pious Reverence for the Representatives of the Family, and that the other Relations are unwilling to press them, and will take these Demands upon them by a Little at a Time; but the Interests of general Justice require that Demands should not be afterwards enforced in this Way; and Lord Commissioner Ashhurst said, that all Statutes of Limitations and Prescriptions, analogous to them, are to be favoured; Jones *v.* Tuberville, 2 Ves. Jun. 11.

"In the Case of Pickering *v.* Lord Stamford, 2 Ves. Jun. 272, 581, a Suit was instituted by Persons claiming as next of Kin of Thomas Walton, who died above thirty Years before; having directed by his Will that his personal Estate should be applied to such charitable Purposes as his Executors should direct. The Executors established a School; and the Object of the Suit was to recover so much of the Personalty, vested in the Mortgagees, as had not been applied (all Dispositions by Will of Money secured by Mortgage to charitable Uses being void, by the Statute of Mortmain). The Master of the Rolls, Sir R. P. Arden, upon the first Hearing of the Case, directed an Inquiry to be made into the particular Circumstances, without Prejudice as to the Result; and upon that Occasion observed, that if a Party, having Knowledge of his Rights, will sit still, and, without asserting them, permit Persons to act as if they did not exist, to acquire Interests, and consider themselves as Owners of Property to which the other will not assert his Right, there is no Reason why every Presumption should not arise, as in the Case of a Bond.—Upon the Inquiry which was directed, it appeared that the Accounts had been kept so regularly, that there was no Difficulty in ascertaining the personal Estate at the Death of the Testator. The Master of the Rolls, upon a full and able View of all the Circumstances of the Case, decided in favour of the Claim of the next of Kin. The following are the Passages of his Opinion more immediately applicable to the Subject before us:—'The Bill certainly requires very extraordinary Circumstances to sustain it at so late a Period; and the first Question is, whether, at this Distance of Time, it is too late to make the Claim? The Question in all the Cases is, whether there are Motives of public Policy, or private Inconvenience, to induce the Court to say, that under all the Circumstances the Suit ought not to be entertained? It is a very sensible Rule, that Parties shall not, by neglecting to bring forward their Demands, put others to a State of Inconvenience, subjecting them to insuperable Difficulties. If, from the Plaintiff's lying-by, it is impossible for the Defendants to render the Accounts he calls for, or it will subject them to great Inconveni-

[(8.) That the Rule does not extend to Trusts by Implication, but only to actual Trusts, see Beckford *v.* Wade, 17 Vesey, and Cases there cited.]

ence, he must suffer, or the Court will interpose what is the best Ground, public Convenience. The Question is, whether these Principles apply to this Case? But first, I shall mention another Ground; the Presumption that the Demand itself has in some Manner been satisfied or released; that is a Ground perfectly different from a Bar, and prevails as much in a Court of Equity, as it has by modern Determinations been wisely held to do at Law. Every Presumption that can be fairly made, shall be made against a stale Demand. It may arise from the Acts of the Parties; or the very Forbearance to make the Demand affords a Presumption, either that the Claimant is conscious it was satisfied, or intended to relinquish it.' ' It will not be necessary to state the Examination of the particular Circumstances from which his Honor very accurately concluded, that it was impossible by any fair Presumption to infer, that the Parties, being cognizant of their Rights, slept upon them, or ever intended to relinquish, what he must say upon the whole Complexion of the Case, they never knew they had a Right to.

" ' If the Accounts of the personal Estate (he proceeded to say) could not now be obtained, and it was impossible to know to what the Plaintiffs were entitled, that is a sufficient Reason for saying, they should not have it, and rob the Charity, because they could not tell what belonged to them, and what to the Charity; but that unfortunately is not the Case. Therefore, desiring to be understood by no Means to give any Countenance to those stale Demands, but upon the Circumstances that there is nothing inducing great public or private Inconvenience, that the Accounts are found, and that the Trustees are not called upon to account for what has been disbursed, I am bound to decide in Favour of the Plaintiffs.'

[22] " In Blewitt *v.* Thomas, 2 Ves. Jun. 669, Length of Time was pleaded in Equity, as Matter of Defence, and as inducing the Presumption, that the Demand was satisfied; and the Plea was allowed. But in Pearson *v.* Belchier, 4 Ves. 627, the Master of the Rolls, while he held that a Bill could not be entertained, on Account of Length of Time, said, that it could not be pleaded in Bar in the Court of Chancery. See also as to the following Cases, respecting the Allowance or Disallowance of Length of Time, in Opposition to an equitable Claim; Earl of Deloraine *v.* Brown, 3 Bro. Ch. 633; Hercy *v.* Dinwoody, 4 Bro. Ch. 257, 2 Ves. Jun. 87; Ackerly *v.* Roe, 5 Ves. 565; Harmood *v.* Oglander, 6 Ves. 199, 8 Ves. 106. (9.) In the Case of Sutton *v.* Earl of Scarborough, 9 Ves. 71, (just published since this Sheet was sent to the Press) the Court of Chancery allows a Plea of the Statute of Limitations to a Bill in the Nature of an Action for Money had and received, both as to the Discovery and Relief; but the Decision does not affect the Case of a mere Bill of Discovery. (10.)

[23] " None of the Statutes of Limitations contain any Provision in Favour of incorporeal Rights, (except in case of Rents). According to the Rules of Law, the Right to these can only be founded upon an actual Grant, or an immemorial Prescription, which supposes a Grant. But in order to establish a Right, as founded upon a Grant, it would be unreasonable to expect the Production of the Grant itself, as a Requisite indispensible to the Support of the Title which is derived from it. A long continued Enjoyment, not otherwise to be accounted for, may, after such a Period of Time as renders it probable that the Deed may be lost or destroyed, be fairly considered as Evidence of its former Existence; and from such Evidence, the Jury may be fairly induced to infer the Truth of any Proposition, which is not opposed by stronger Evidence on the other Side. But the Decisions of our Courts have carried the Matter much further than is warranted by the mere Application of this Principle; and under the Name of a Presumption, have, in effect, rendered the Length of Enjoyment a direct and substantive Title.

[24] " It is held that not only private Grants, but Records, and even Acts of Parliament, may be presumed from Length of Time; and so far as any such Presumption is founded upon a real unaffected Opinion of the Truth so presumed, I subscribe to the Justice and Propriety of the Proceeding. Beyond that, whilst I admit that the Maintenance of a long established Enjoy-

[(9.) See further Stackhouse *v.* Bamston, 10 Vesey, 453, and Cases there cited. As to limiting an Account to six Years before the filing the Bill, see ibid. and Harmood *v.* Oglander, 6 Vesey, 199, 8 Vesey, 106.]

[(10.) See Baillie *v.* Sibbald, 15 Ves. 185.]

ment is a very desirable Object, I cannot forbear entertaining the Opinion, that recent Decisions have exceeded the proper Limits of judicial Authority, and have introduced a Principle, which, though it is now perhaps only open to Controversy, as a Matter of Speculation, was not warranted by the fair Rules of legal Argument.

"In the Case of the Mayor of Kingston-upon-Hull against Horner, Cowp. 102, a Toll had been received by the Corporation for upwards of 300 Years, but the Corporation itself having been created within the Time of legal Memory, it was impossible that the Title could be founded upon Prescription; but it was left to the Jury to infer from the Usage, whether there had not been a Grant of the Duties subsequent to the Charter of Incorporation; and the Verdict founded upon the Presumption of such a Grant was supported by the Court of King's Bench. But soon afterwards, Lord Mansfield, in referring to the Authority of that Case, advanced a Position in Favour of the Principle which I venture to contest. He said, that a Grant may be presumed from great Length of Possession. It was so done in the Case of the Corporation of Hull against Horner; 'not that in such Cases the Court really thinks a Grant has been made, because it is not probable that a Grant should have existed, without its being upon Record; but they presume the Fact for the Purpose, and from a Principle of quieting the Possession;" Cowp. 214. That is, in a Case of adverse Right, they profess, by Way of Form, to believe as true, what, in point of Fact, they believe to be false, in order that Length of Time may, by Fiction and Circuity, produce an Effect to which directly and primarily it is inadequate.

[25] "By Statute, any Quit-rent which has not been paid for fifty Years is extinguished; and there having been no Payment of a Quit-Rent of Half-a-Crown for thirty-seven Years, that Circumstance was left to the Jury as a Ground for presuming an Extinguishment or Release; but the Court of King's Bench decided, that such a Presumption was not warranted by the Evidence. Lord Mansfield, on that Occasion, adverted to the Principle, that the Statute of Limitations is a positive Bar from Length of Time, and operates so conclusively, that although the Jury and the Court are satisfied that the Claim still subsists, yet they are bound by the Statute to defeat it: that there are many Cases not within the Statute, where, from a Principle of quieting the Possession, the Court has thought that a Jury should presume any Thing to support a Length of Possession. He then proceeded to the Position from which I have expressed my Dissent, and afterwards shewed, from reasoning adapted to the particular Case, that there was no Ground for inferring an Extinguishment. Mr. Justice Aston, in Support of the same Opinion, observed, that a Presumption from Length of Time to support a Right was very different from a Presumption to defeat a Right; Eldridge *v.* Knott, Cowp. 214.

[26] "But the Case which seems to have had the most Influence in modern Determinations, is that of Lewis *v.* Price, tried before Mr. Justice Wilmot, at Worcester Assizes, in the Year 1761, in which he said, that where a House had been built forty Years, and has had Lights at the End of it, if the Owner of the adjoining Ground builds against them, so as to obstruct them, an Action lies, and this is founded upon the same Reason as where they have been immemorial; for this is long enough to induce a Presumption, that there was originally some Agreement between the Parties: and he said, that as twenty Years was sufficient to give a Title in Ejectment, on which he might recover the House itself, he saw no Reason why it should not be sufficient to entitle him to any Easement belonging to the House; Espinasses' Dig. 636. Afterwards, upon a Motion for a new Trial, twenty Years' quiet and uninterrupted Possession of ancient Lights (*a*) was deemed a sufficient Ground, from which a Jury might presume a Grant; Darwin *v.* Upton, cited 3 T. R. 159. So far as Length of Time is merely regarded as a Circumstance, upon which a Jury may exercise their Judgment upon the real Fact, I have already admitted the Propriety of its Influence. But now it has become a Matter of daily and

"(*a*) There seems to be either a Redundancy or Inaccuracy in this Expression. If the Meaning was, that an Enjoyment of twenty Years was sufficient to impress the Character of Antiquity, the Epithet of *ancient* is implied in the Statement of the Fact. If the Word is used in its old and legitimate Signification, the Term of twenty Years is out of the Question."

established Practice to adopt Mr. Justice Wilmot's Idea to its full Extent, that twenty Years' Possession gives a Title to any Easement. It is acted upon as a Presumption, *juris & de jure*, a legal Fiction, upon which any Argument or Discussion is as much excluded as upon an Averment of the Defendant's being in the Custody of the Marshal of the Marshalsea, and not as a mere Circumstance open to the Discussion and Consideration of a Jury. (11.) And it has even been held, that the Forbearance to exercise a Right for twenty Years shall produce an Extinction of the Right itself, and that all Rights incident to Land shall be referred to the Criterion of twenty Years' Enjoyment.

[27] "Having been engaged in opposing the Application of that Principle, and having, in Conjunction with some of the most distinguished Ornaments of the Profession, entertained the Idea, that it was a Deviation from the regular Course of the Law, to give the Effect of a Bar to a mere Presumption, whilst I submit to the contrary Adjudication of the Court, I cannot, upon the most frequent Consideration, adopt the Reasoning upon which that Adjudication proceeded; and hope I shall not incur the Imputation of Presumption, by stating the Argument by which it was opposed; fully aware of the Influence of that Prejudice which results from a professional Engagement, and of the Deference which is due to judicial Authority.

[28] "I would previously suggest, that the Analogy stated by Mr. Justice Wilmot is apparently subject to two Objections; 1st. It is an Analogy of Common Law, drawn from the Provisions of a particular Statute. The Statute professedly introduces an Alteration in the Law, and it is the only Authority by which such an Alteration can be properly made. The Courts of Justice must take the Law as they find it, and are not authorised to say, that because the Legislature has made an Alteration, which we find to be beneficial in one Case, therefore, we will make an Alteration in another Case, where the same beneficial Effects will probably ensue. But, 2d. the Principle of the Statute of Limitations is, that it operates upon an adverse Possession, upon one Person enjoying Property which another was authorised to claim, and the Omission of claiming which is a Mark of Negligence, and therefore should be discouraged: whereas the Use of an Easement is not in every Instance an Usurpation of Property; it may not be subject to an Action; and whilst the Owner of the adjacent Property is not injured in his own Possession, he has no Cause of Complaint. But it would be injurious to debar him from the full Enjoyment of the Rights incident to his own Property, such as the building upon his Land, because another Person had previously built on a contiguous Part of the adjoining Land, though, in doing so, he had not rendered himself liable to any Action, but had only been subject to the Imputation of Folly, by placing his Windows in a Situation where they were liable to be obstructed. (*a*) Whatever may be fairly ascribed to Courtesy or Forbearance, ought not hastily to be construed as the Exercise of an adverse Right; much less should any Act be allowed to have the Effects of an adverse Possession, where there could be no Right of Contest, and consequently no Imputation of Laches.

[29] "In the Case of Prescott and Phillips, which was tried at Chester Spring Assizes, 1797, it appeared, that the Persons under whom the Defendant claimed, had an ancient Mill and Weir, which were permitted to fall into Decay; and after a Period of twenty Years, above nineteen Years before the Commencement of the Action, another Mill was erected (upon which it may be assumed, for the Purpose of the Argument, that there was

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[(11.) In Beeley *v.* Shaw, 6 E. 214, Lord Ellenborough said—"Twenty Years exclusive Enjoyment in any particular Manner affords a *conclusive Presumption* of Right, derived from Grant or Act of Parliament."]

"(*a*) If a Person places Windows contiguous to my Land, I must, according to modern Practice, put myself to the Expence of erecting a Building to obstruct them, within the Space of twenty Years, which may be attended with Detriment and Inconvenience to me, or I must be decreed to have made a Grant and Surrender of the Rights which previously belonged to me. The practical Inconvenience of this is perhaps not very great, with respect to Buildings recently erected, for the modern Decisions are sufficiently notorious, and the requisite Precaution is generally taken; but many Rights have been lost or prejudiced, for Want of knowing, by the Spirit of Prophecy, that such a System would have been established."

no Alteration in the Scite or Fall, as no Reference was made to these Circumstances), no Act having been done in the mean Time by the Owners of the adjacent Land, adverse to the Right. The Judges at the Assizes, and afterwards in the Court of King's Bench, were of Opinion, that the Cesser of twenty Years in the Enjoyment was an Extinguishment of the Right to the Water-course; and, upon that general Principle, decided in favour of the Plaintiff, treating it as a Case which would not even warrant an Argument.

"The Observations which occurred to the present Writer, in support of the Position, that it ought not to be presumed that the ancient Right was lost or abandoned, were, 1st. That no inconsistent or adverse Enjoyment had been acquired; 2d. Because the Traces of the ancient Right remained at the Time of the new Erection; 3d. Because so long a Period having elapsed since the present Erection, without the Right being judicially questioned, it ought to be presumed that that was in pursuance of, and connected with, the ancient Right. An Analogy has been adopted to the Statute of Limitations, in the Cases of Corporate Offices, Easements and Bonds; but the Statute of Limitations, in Cases of Ejectment, only operates upon Acts of adverse Possession, not permitting an undisturbed Possession and actual Enjoyment to be defeated. In Cases of Corporate Offices, the King's Bench proceeded upon the Exercise of a discretionary Power, and always in Protection of a positive and actual Enjoyment. None of the Cases embrace the Principle, that a Right is lost by Neglect, there having been no adverse Enjoyment; and the Protection is merely personal and individual. Upon the Death of the Corporator, the Right reverts according to the original Constitution.

"In respect to Easements, all the Cases are in support of positive Acts, as the making Windows: there an Enjoyment was actually acquired, which the Court would not suffer to be defeated. There was a Case in Surry, before Lord Mansfield, who laid it down, that an incorporeal Right, which, if existing, *must be in constant Use*, ought to be decided by Analogy to the Statute of Limitations. *Must be in constant Use* is emphatic. But *non constat*, that a Right must be in constant Use, the Exercise of which is attended with Expence and Risk. The Party has not submitted to any actual Inconvenience, which he might have avoided by the Assertion of his Right; he has merely not deemed it necessary to exercise a Right, which may or may not be beneficial, according to Times and Circumstances; he has not acquiesced in any Act tending to contradict or invalidate it. If A. buys of B. the Coals under a Piece of Land, and of C. a Right of Road to these Coals through a barren Moor, (12.) and declines getting the Coals for twenty Years (the Place continuing a barren Moor), is the Grant void or lost? Here, at the Time when the Mill was suffered to fall into Decay, the Right was as great as if an original Right to dam up the Water had been granted at that Time. If, after such Grant, the Plaintiff had made a Weir, and enjoyed it for twenty Years, the Grant or Right might be presumed to have been surrendered. That is a Case of adverse Enjoyment; but merely suffering the River to run in its natural Course, is reducing it to the Case of a barren Moor; and the Case of Eldridge and Knott establishes the Position, that the mere Non-enjoyment of an incorporeal Right does not necessarily induce the Presumption of its Extinguishment. With respect to Bonds, a personal Demand should, from the Nature of it, be recently pursued, and the Non-claim of twenty Years is a strong Presumption of Payment; but this is no-wise similar in Principle to a Right connected with the optional Mode of enjoying a real Estate.

[30] "The Court of Common Pleas have since decided, in an Action brought by the Owner of a Market at Southall, for erecting another Market at Hayes, within three Miles, that the Erection of Pens, and the Sale of Cattle in them, for twenty Years, was a clear Bar to the Right of Action; Holcroft v. Heel, 1 Bos. 400.

"The Attempt to found a Right upon an Enjoyment of twenty Years was carried to the most extravagant Length, in a Case which was brought to Trial at Lancaster Summer Assizes, 1800. A Defendant, in Justification of a Trespass, pleaded that the Owners of a Messuage had, from Time immemorial, enjoyed the Right of shooting upon the Plaintiff's Land; and it was intended to

[(12.) In Seaman v. Vawdrey, 16 Ves. 390, it was held, by the Master of the Rolls, that no Presumption occurs from Nonuser in case of Mines, Salt Springs, &c.]

be proved, that the Defendant and his Father had been in the Habit of sporting there upwards of twenty Years. But the Counsel for the Defendant did not persist in an Attempt which could only have subjected themselves to equal Ridicule with their Client.

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[31] "The present Discussion has been composed for several Years, and I have ingrafted the Substance of it into the View of the Decisions of Lord Mansfield; a Work in which I have had the Mortification to experience a total Sacrifice of a considerable Portion of Assiduity and Expence. Since that Time, the Subject has been before the Court of King's Bench, in the Case of Campbell *v.* Wilson, 3 East, 294. The Defendant had, for upwards of twenty Years, used a Way over the Plaintiff's Land; the Right to which, if it really existed, must, from the Circumstance of the Case, necessarily have commenced within thirty Years; but there was Evidence to shew that the Possession was adverse: on the other Side there were Circumstances to shew the Probability of the Claim having originated in Mistake. Mr. Justice Chambre observed to the Jury, that it was probable that the Enjoyment did originate in the Mistake supposed; but however that might be, if they were satisfied that it was adverse, and had continued twenty Years, it was sufficient Ground for presuming a Grant. Upon a Motion for a new Trial, Lord Ellenborough observed, that it came to the common Case of an adverse Possession of a Way for twenty Years, without any Thing to qualify that adverse Enjoyment; and there was no Reason why the Jury should not, as in other Cases, make the Presumption, that the Defendant acted by Right. Mr. J. Grose thought that in Substance the Question was left to the Jury, whether the Enjoyment originated in a Grant, or in any other Manner? and therefore, he could not say, but that upon the Evidence the Jury might not make the Presumption which they had done; though, had he been one of them, he did not know that he should have dared to do so. Mr. Justice Lawrence said, no Doubt adverse Enjoyment for twenty Years, unexplained, is Evidence sufficient for the Jury to found a Presumption that it was a legal Enjoyment. Mr. Justice Le Blanc thought that such Length of Enjoyment was so strong Evidence of a Right, that the Jury should not be directed to consider small Circumstances as founding a Presumption that it arose otherwise than by Grant. The same learned Judge explained the Case respecting Hayes Market to have only amounted to an Intimation, that it would be left to the Jury to find for the Defendant, upon the Ground of Presumption of a Grant, after twenty Years' uninterrupted Use. And Mr. J. Grose said, he assented to that Case, as so explained, but no further.

"In reviewing the preceding Opinions, Mr. Justice Grose seems to concur in the Opinion which I have endeavoured to maintain — that the Presumption in these Cases is real Matter of Inference, upon which the Jury are, as in other Cases of circumstantial Evidence, to exercise a genuine Opinion as to the Existence or Non-existence of the Fact in Question. But I cannot concur with him in thinking, that such was really the Spirit of the Directions to the Jury in the particular Case. The other Judges certainly appear to support the fictitious Presumption (*a*) that although, in point of Fact, no legal Title

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"(*a*) There are, in Truth, two Kinds of Presumption acted upon in the Law, which scarcely agree in any Thing but the Name: 1st., Inferences of Facts really and *bonâ fide* made; as where a Person, having the recent Possession of stolen Goods, is presumed to be the Thief; 2. Presumptions of Form; as where a satisfied Term is presumed to be surrendered, though, in Fact, no such Thing is believed to have taken place. And to the latter Class, the practical Application of the Presumption in question is certainly to be referred; because in most of the Cases, it is impossible to suppose that any Person in his Senses can believe the Fact to be true, which is said to be presumed. Juries are never called upon to balance between the Improbability of an Enjoyment having subsisted for twenty Years, without a legal Grant, and the opposite and infinitely greater Improbability, if so gentle a Term can be applied to what is absolutely incredible, that within twenty Years a Deed creating a Right, or even a Grant from the Crown (an Act which must be upon Record), should have actually been made, and that every Trace of its Existence should be lost and obliterated. [See the Observations of Lord Erskine, in favour of these Presumptions; Hilary *v.* Walker, 12 Ves. 239.]

existed, the adverse Possession of twenty Years was to be deemed sufficient to constitute such Title, and that the false Supposition of a Grant, destroyed by Time or Accident, was the Mode and Form in which that Right is to be maintained."

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"In fact, Courts have departed from their proper Province, whenever they have prescribed to a Jury the Inference which they are to draw from given Facts: and twenty Years, or any other arbitrary Period, can never be the Ground of a legitimate Inference; which must always depend upon the general Combination of Circumstances.

"In the Case of Campbell *v.* Wilson, the Jury were told, that if the Enjoyment had been by Leave or Favour, *or otherwise than as a Claim or Assertion of a Right*, it would repel the Presumption of a Grant: but this Principle would destroy the modern Doctrine, so far as relates to the Enjoyment of Lights, as has already been particularly shewn.

"I will not contend that, after the Decisions which have taken place, it may not be more convenient to the Public, that the Doctrine which has been extensively acted upon in the Enjoyment of real Estates, should be adhered to than departed from, though of very modern Origin. This differs from the Cases in which I contend for the Departure from erroneous Precedent, on Account of the Consequences being merely prospective: but I shall ever retain the Sentiment, that the Introduction of such a Doctrine was a Perversion of legal Principles, and an unwarrantable Assumption of Authority. See the Cases upon this Subject, collected in Mr. Serjeant Williams's Note to Yard *v.* Ford, 2 Saund. 175." [And see Daniel *v.* North, 11 E. 372, as to the Question, how far the Presumption attaches against the Landlord, while the Premises affected are in the Possession of a Tenant?]

# PART IV. CLASS IX.

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## JURIES AND TRIALS.*

* As frequent Reference is made to the Number of the Statutes respecting Juries, I have thought it desirable to present a general List of their Titles; although most of those which are anterior to the Reign of William III. are no longer of any practical Importance. In perusing this List, one of the most striking Observations is, the Number of Provisions which occur respecting the harsh and absurd Proceeding for correcting erroneous Verdicts by *Attaint*; and from the Attention paid to this Procedure by the Legislature, it may be reasonably inferred, that the Instances of resorting to it were very frequent; and the Charges of Corruption of Juries, and of the Sheriffs and other Officers entrusted with returning them, are likewise so numerous, that the Provisions for repressing those Mischiefs were most probably founded upon Reasons of imperious Necessity. It certainly is one of the most prominent Distinctions in favour of later Laws, that such Charges are very rarely advanced, even by those who are most disappointed by the Issue of a Trial. Another prominent Subject of the Statutes was the Regulation of Issues levied upon the Jurors, a Measure which is now become entirely obsolete, although the ancient Form of the Return to the Writ of Distringas is still continued. The Attendance of Juries upon Trials at Bar and other Proceedings must, in its Nature, have been very onerous; and perhaps few Alterations of the Law have been more beneficial than those for directing the Return of a General Panel, and for the Regulation of Special Juries. But Complaints are made, apparently not quite without Foundation, of the existing Mode of selecting Special Juries in the Metropolis, by forming Lists of Persons to whom the Attendance is an Object in point of pecuniary Emolument, rather than by summoning, as is the usual Course upon Trials in the Conntry, Gentlemen who are regarded as holding a superior Station in point of Respectability. In this Observation I am very far from intimating an Assent to the Charges of Partiality made against Special Juries, as contrasted with common ones, upon Questions of Political Feeling. I think it unfortunate that compulsory Powers for enforcing the Attendance of Special Jurors in the Country are in general neglected, and that their Appearance is considered entirely optional; and perhaps the Non-attendance of Persons of independent Situations at the Trials in London and Westminster, may have been the Occasion of the Practice which is at present generally complained of.

The ancient Functions of Juries were very different ones from the modern one of finding a Verdict according to the Evidence. The following View of the Subject in the Reign of Edward I., taken from Mr. Reeves's History of the Law, vol. 2, p. 271, is very striking and important. In this, as in most other Respects, the Advantage of the modern Course of Jurisprudence, as applied to an advanced State of Society, is very considerable:

" It was many Years after this Reign, and when the second (since called the *petty)* Jury began to be considered rather as Judges of the Presumption raised by the finding of the Presentors, and not as Witnesses of the Fact, that a Kind of Evidence used to be exhibited to them. The first Evidence made use of in this Way consisted of written Papers; such as Depositions, Informa-

tions, and Examinations, taken out of Court: this led by Degrees to a sparing Use of *vivâ voce* Testimony. It was long before they thought it necessary to bring Evidence into Court in Support of the Prosecution, and it was still longer before they allowed the Prisoner to disprove the Indictment by any Thing else than the Oaths of the twelve *Jurati*. When a Prisoner was permitted to call Witnesses to prove such Matter as he offered in his Defence, it was a high Favour; and depended much on the Discretion of the Court, and the Manner in which the Charge had been made out by the Prosecutors: besides this, the Witnesses for the Prisoner were never upon Oath; which always left a Pretence for discrediting their Testimony.

"The Trial by Jury at the Time of which we are now writing, was, to all Intents and Purposes, a Trial by Witnesses; and, no Doubt, deserved all the Value that was set on it by our Ancestors When the Condition of Society so changed, that, notwithstanding all the Supposition of their personal Knowledge of the Fact, as coming from the Vicinage, they were in Reality wholly ignorant of it; and it was necessary the Charge should be *proved* to them, before they could pronounce on the Guilt or Innocence of the Party; then the old Proceeding became a Piece of Mummery, productive of Oppression and Tyranny, till at Length it was softened by the calling of Witnesses to inform the Conscience of the twelve Jurors. This was the last Improvement of the Trial by Jury in Criminal Cases, and it was not thoroughly effected till the Times of Edward VI. and Queen Mary."

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## No. 1.

## 3 Edward I. c. 38.—An Attaint shall be granted in Plea of Land touching Freehold.

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## No. 2.

## 6 Edward I. c. 2.—In what Case Nonage of the Plaintiff shall not stay an Enquest.

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## No. 3.

## 13 Edward I. stat. 1. (Westminster second) c. 30.—The Authority of Justices of *Nisi Prius*. Adjournment of Suits. Certain Writs that be determinable in their proper Counties. A Jury may give their Verdict at large. None but which were summoned shall be put in Assises or Juries.

[Inserted ante. Class I. No. 4.]

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## No. 4.

## 13 Edward I. stat. 1. (Westminster second) c. 31.—An Exception to a Plea shall be sealed by the Justices.

[Inserted post. Title *Error*, with Notes ]

No. 5.

13 Edward I. stat. 1. (Westminster second) c. 38.—How many shall be returned in Juries and petit Assises, and of what Age they shall be.

*Ex Rot. in Turr.* Lond:

QUIA etiam vicecomites hundredarii & ballivi libertatum consueverunt gravare subditos suos ponendo in assisis & juratis homines languidos decrepitos perpetua vel temporali infirmitate languentes homines etiam tempore summonitionis sue in patria non commorantes summonendo etiam effrenatam multitudinem juratorum ita ut a quibusdam eos in pace dimittendo pecuniam extorqueant & sic fiunt assise & jurate multotiens per pauperiores divitibus pro suo dando domi commorantibus statutum est decetero quod non summoneantur in una assisa plures quam viginti et quatuor Senes etiam videlicet ultra sexaginta & decem annos perpetuo languidi vel tempore summonitionis infirmi vel in patria non commorantes non ponantur in juratis vel minoribus assisis. Nec etiam ponantur in assisis aut juratis licet in proprio comitatu capi debeant aliqui qui minus habeant tenementum quam ad valentiam viginti solidorum per annum. Et si hujusmodi assise & jurate extra comitatum capi debeant non ponatur in eis aliquis qui minus tenementum habeat quam ad valentiam quadraginta solidorum per annum hiis exceptis qui testes sunt in cartis vel aliis scriptis quorum presentia necessaria est dum tamen potentes sint ad laborandum. Nec debet istud statutum extendi ad magnas assisas in quibus aliquando oportet appo-

No. 5. 13 Edward I. st. 1. c. 38.

" FORASMUCH also " Sheriffs, Hundreders, " and Bailiffs of Liberties, " have used to grieve those " which be in Subjection unto " them, putting in Assises and " Juries men diseased and de- " crepit, and having continual " or sudden Disease; and men " also that dwelled not in the " Country at the Time of the " Summons; and summon also " an unreasonable Multitude " of Jurors, for to extort mo- " ney from some of them for " letting them go in Peace, " and so the Assises and Ju- " ries pass many Times by " poor Men, and the rich Men " abide at home by Reason of " their Bribes;' it is ordain- ' ed, That from henceforth in ' one Assise no more shall be ' summoned than four and ' twenty; and old Men, above ' threescore and ten Years, ' being continually sick, or ' being diseased at the Time ' of the Summons, or not ' dwelling in that Country, ' shall not be put in Juries of ' petit Assises. Nor any shall ' be put in Assises or Juries, ' though they ought to be ta- ' ken in their own Shire, that ' hold a Tenement of less than ' the Value of twenty shillings ' yearly. And if such Assises ' and Juries be taken out of the ' Shire, none shall pass in them ' but such *as may dispend* (1.) ' forty Shillings yearly at the ' least, except such as be Wit- ' nesses in Deeds or other Wri-

What Sort of Persons shall be returned in Juries or petit Assises, and of what Age they shall be.

(1.) This is according to the Translation of Cay. In Ruffhead it is erroneously put " but such as hold a Tenement of *less than* the Value of 40s."

*Ex Rot. in Turr.* Lond.

No. 5.
13 Edward I. st. 1. c. 38.
What Sort of Persons shall be returned in Great Assizes.

'tings whose Presence is necessary, so that they be able 'to travel. Neither shall this 'Statute extend to great Assises, in which it behoveth 'many times Knights to pass, 'not resident in the Country, 'for the Scarcity of Knights, 'so that they have Land in the 'Shire. And if the Sheriff, 'or his Under-sheriffs, or Bailiffs of Liberties, offend in 'any Point of this Statute, and 'thereupon be convict, Damages shall be awarded to 'the Parties grieved, and they 'shall nevertheless be amerced to the King. And Justices assigned to take Assises, 'when they come into the 'Shire, shall have Power to 'hear the Plaints of all Complainants as to the Articles 'contained in this Statute, and 'to minister Justice in Form 'aforesaid.'

nere milites in patria non residentes propter paucitatem militum dum tamen in comitatu habeant tenementum. Et si vicecomes vel subballivi sui vel ballivi libertatis contra istud statutum in aliquo articulo venerint & super hoc convincantur restituant dampna gravatis & nichilominus sint in misericordia Domini Regis. Et habeant justitiarii ad assisas capiendas assignati cum in comitatum venerint potestatem audiendi querimonias singulorum conquirentium quoad articulos in isto statuto contentos & justitiam in forma predicta exhibendi.

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## No. 6.

21 Edward I. stat. 1.—De iis qui ponendi sunt in Assisis.

What Freehold Lands Jurors must have, which shall pass in Trial within the same County or without.*

* Forty Shillings, except in certain Cases.

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## No. 7.

28 Edward I. stat. 3. c. 9.—What Sort of People shall be returned upon every Jury.

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## No. 8.

33 Edward I. stat. 4.—He that challengeth a Jury or Juror for the King shall shew his Cause.

No. 9.

12 Edward II. c. 3. — Inquests and Juries touching Plea of Land shall be taken by *Nisi Prius*.

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No. 10.

1 Edward III. stat. 1. c. 4. — Trial of an Averment in a Writ of false Judgment.

*Ex Rot. in Turr.* Lond.

AUXINT est acorde ordine & establi en amendement de la lei qe countre record de Court le quel record vient en la Court le Roi par bref de faux juggement en cas ou la partie dist qe le record est autre qe la Court ne recorde soit receu averement de bone pais & de ceux qe furent presentz en la Court quant le record se fist si tieux veignent ove les autres du pais par return de visc' & sils ne veignent soit lenqueste prise par bone pays.

'ITEM, it is accorded, ordained, and established in Amendment of the Law, That when a Record cometh into the King's Court by Writ of false Judgment, in case where the Party alledgeth that the Record is otherwise than the Court doth record the same, the Averment shall be received of the good Country, and of them which were present in the Court when the Record was made, if they do come with others of the Country by the Sheriff's Return; and if they come not, the Inquest shall be taken by the good Country.'

No. 10. 1 Edward III. st. 1. c. 4.

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No. 11.

1 Edward III. stat. 1. c. 6. — An Attaint will lie as well upon the Principal as upon the Damages.

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No. 12.

2 Edward III. c. 16.—*Nisi Prius* may be granted as well at the Tenants Suit as the Demandants.

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No. 13.

5 Edward III. c. 6. — *Nisi Prius* shall be granted in Attaint, but no Essoin or Protection. Days given.

No. 14.

5 Edward III. c. 7.—Attaint shall be granted in Trespass, if the Damage pass xl *s.*

No. 15.

5 Edward III. c. 10.—The Punishment of a Juror that is Ambidexter, and taketh Money.

No. 16.

9 Edward III. stat. 1. c. 4.—Trial of a Deed dated where the King's Writ runneth not.

No. 17.

14 Edward III. stat. 1. c. 16.—Before what Persons *Nisi Prius* may be granted.

[Inserted ante. Class I. No. 13.]

No. 18.

28 Edward III. c. 8.—An Attaint shall be granted as well upon a Bill as upon a Writ of Trespass.

No. 19.

P. 28 Edward III. c. 13.—The Warranty of Packing of Wool shall be put out. An Inquest shall be *de Medietate Linguæ* where an Alien is Party.

*Ex Rot. in Turr.* Lond.

No. 19. 28 Edward III. c. 13.

II. AND that in all Manner of Inquests and Proofs which be to be taken or made amongst Aliens and Denizens, be they Merchants or other, as well before the Mayor of the Staple as before any other Justices or Ministers, although the King be Party, the one Half of the Inquests or Proof shall be Denizens, and the other Half of Aliens, if so many Aliens

ET qe en tote manere denquestes & proeves qe sont a prendre ou affaire entre aliens & denzeins sojent ils marchantz ou autres sibien devant le meire de lestaple come devant queconqe autres Juges ou Ministres tout soit le Roi partie soit la moite del enquest ou del prove de denzeins & lautre moite des aliens si tantz des aliens soient en la ville ou lieu ou ticle enqueste ou

*Ex Rot. in Turr. Lond.*

No. 19. 28 Edward III. c. 13.

prove soit apprendre qe ne soient mie parties ni od les parties en contractes plees ou autres quereles dount tieles enquestes ou proves deivent estre pris et si tantz des aliens ne y soient point adonqes soient mis en tieux enquestes & proeves tantz des aliens come serront trovez en meismes les villes ou lieux qe a ce ne soient pas parties ne od les parties come devant est dit & le remanant de denzeins qe soient prodes hommes & nient suspecionouses a lune partie ne a lautre.

'and Foreigners be in the 'Town or Place where such 'Inquest or Proof is to be ta- 'ken, that be not Parties, nor 'with the Parties in Contracts, 'Pleas, or other Quarrels, 'whereof such Inquests or 'Proofs ought to be taken; and 'if there be not so many Ali- 'ens, then shall there be put in 'such Inquests or Proofs as 'many Aliens as shall be found 'in the same Towns or Places 'which be not thereto Parties, 'nor with the Parties, as afore 'is said, and the Remnant of 'Denizens, which be good 'Men, and not suspicious to 'the one Party nor to the 'other.' (1.)

(1) The Statute of the Staple, 27 Edward III. c. 8. contained a Provision, that upon all Plaints before the Mayor of the Staple between the Merchants and Ministers thereof, upon which an Inquest should be awarded, if both Parties were Strangers, it should be tried by Strangers; if both Denizens, it should be tried by Denizens, if one a Denizen and the other an Alien, one Moiety of the Inquest should be Denizens and the other Aliens. By Stat 13 and 14 Charles II "*For preventing Frauds and regulating Abuses in his Majesty's Customs,*" it is provided, that in all Suits concerning Tonnage and Poundage, or Ships or Goods forfeited for unlawful Importation or Exportation, there shall not be any party Jury, but only such as are the natural and free-born Subjects of the King By the latter Statute, 29 George II. c 6 it is provided, that on the Trial of any Issue between a Protestant and a Papist, it shall be lawful to challenge any Papist returned as a Juror: this seems to be repealed by the modern Statutes in Favour of Roman Catholics; see 2 Gabb. 258.—At one Period, in France, Disputes between Protestants and Roman Catholics were to be decided by a Court composed of an equal Number of Persons of each Profession; but this was abolished upon the Revocation of the Edict of Nantes.

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## No. 20.

### 34 Edward III. c. 4.—What Sort of People shall be returned upon every Jury.

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## No. 21.

### 34 Edward III. c. 7.—An Attaint will lie as well in Plea Real as Personal.

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## No. 22.

### 34 Edward III. c. 8.—The Penalty of a Juror taking Reward to give his Verdict.

No. 23.

38 Edward III. stat. 1. c. 12.—The Punishment of a Juror taking Reward to give Verdict, and of Embraceors.

No. 24.

42 Edward III. c. 11.—Copies of Panels shall be delivered to the Parties six Days before the Sessions.

No. 25.

7 Richard II c. 7.—In what Case a *Nisi Prius* shall be granted at the Suit of any of the Jurors.

No. 26.

9 Richard II. c. 3.—A Writ of Error or Attaint maintainable by him in the Reversion.

No. 27.

2 Henry IV. c. 7.—In what Case the Plaintiff shall not be nonsuit if the Verdict pass against him.

No. 28.

2 Henry V. stat. 2. c. 3.—Of what Estate those Jurors must be, which are to pass touching the Life of Man, Plea real, or forty Marks Damages.

No. 29.

3 Henry V. stat. 2. c. 5.—In which Courts an Attaint may be brought upon a false Verdict given in the City of *Lincoln*, and by whom it shall be tried.

No. 30.

6 Henry VI. c. 2.—How long Time the Copies of Panels in Assise shall be delivered to the Parties before the Sessions of the Justices.

## No. 31.

### 8 Henry VI. c. 29.—An Inquest shall be *de Medietate Linguæ*, where an Alien is Party.

No. 31. 8 Henry VI. c. 29.

*Ex Rot. in Turr. Lond.*

ITEM come en le parlement tenuz a Westm' lan xxviij^me du Roi E. tierce entre autres choses en faveur & libertee des merchantz estraungiers repairantz en le Roialme dEngleterre ordine soit qe si plee ou debate soit moeve devaunt le mair de lestaple entre les marchants ou ministres dicell & sur ceo pur trier la verite enqueste ou proeve soit apprendre si lun partie & lautre soit estraunge soit trie par estraunges & si lun partie & lautre soit deinszein soit trie par deinszeins & si lun *partie soit deinszein & lautre alien soit lun moite de deinszeins & lautre moite des aliens & enoutre qen toutz maners des enquestes & proves qi serroient apprendres ou affairs entre aliens & deinszeins soient ils merchantz ou autres sibien devaunt le mair de lestaple come devaunt qeconqes autres juggez ou ministres tout soit le Roi partie soit lun moitee del enquest ou proeve dez deinszeins & lautre moitee des aliens si tantz des aliens soient en la ville ou lieu ou tiel enquest ou proeve soit apprendre qe ne soient my parties ne ove les parties en contractz plees ou autres querelles dount tielx enquestes ou proeves deyvent estre prisez & si tant dez aliens ne soient point adonqes soient myz en tielx enquestes ou proeves tantz des aliens come mesmes les lieux ou villes qi a ceo ne soint my parties ne ove les parties come devaunt est dit & le remenaunt des deinszeins qi soi-

"ITEM, Whereas in the Parliament holden at *Westminster* the twenty-eighth Year of King *Edward* the Third, amongst other Things in Favour and Liberty of the Merchants Strangers repairing into the Realm of *England*, it was ordained, That if a Plea or Debate be moved before the Mayor of the Staple amongst the Merchants or Ministers of the same, and to try the Truth thereof an Inquest or Proof is to be taken, if the one Party and the other be strange, it should be tried by Strangers; and if the one Party and the other be Denizens, it should be tried by Denizens; and if the one Party be Denizen, and the other an Alien, the one half shall be of Denizens, and the other half Aliens; and moreover, that in all Inquests and Proofs which shall be taken and made betwixt Aliens and Denizens, be they Merchants or other, as well before the Mayor of the Staple as before any other Judges or Ministers, although our Lord the King be Party, the one half of the Inquest or Proof should be of Denizens, and the other half of Aliens, if there be so many Aliens in the Town or Place where such Inquest or Proof is to be taken, that be not Parties, no Parties in Contracts, Pleas, or other Quarrels, whereof such Inquests or Proofs ought to be taken; and if there be

28 Ed. 3. c. 13.

No. 31. 8 Henry VI. c. 29.

" not so many Aliens, then so
" many Aliens shall be put in
" such Inquests or Proof as shall
" be found in the same Places or
" Towns which be not Parties
" thereunto, nor with the Par-
" ties as before is said, and the
" Remnant of Denizens which
" be good Men, and not susp[ect]
" of the one Party nor of the
" other. Sithence which Or-
" dinance the said Merchants
" Aliens have been always de-
" meaned and ruled, as well
" in the Staples, as in other of
" the King's Courts, after the
" Form of the said Ordinance,
" until now of late they have
" been thereof restrained and
" impeached by Colour of ano-
" ther Statute made in the Par-
" liament holden at *Westmin-*
" *ster* the second Year of King
" *Henry*, Father to our Lord (2 H. 5. stat. 2. c. 3.)
" the King that now is; by
" which Statute for the great
" Mischiefs, Damages, and
" Disherisons, which daily do
" happen through the Realm,
" as well in case of the Death
" of a Man, as in case of Free-
" hold and other Cases, by
" them that pass in Inquests in
" the said Case, which were
" common Jurors, and other
" which had but little or no-
" thing to live upon but by
" such Inquests, and which had
" nothing to lose because of
" their false Oaths, whereby
" they do the more lightly of-
" fend their Consciences; and
" for Amendment and Correc-
" tion thereof to be had, it was
" ordained and stablished,
" That no Person be admitted
" to pass in any Inquest upon
" Trial of the Death of a Man,
" nor in any Inquest between
" Party and Party in Plea real
" and personal, whereof the

*Ex Rot. in Turr.* Lond.

ent prodes hommes & nient suspiciouses a lun partie ne a lautre. Depuis quell ordinance les ditz marchantz aliens ount este tout temps demesnez & reulez sibien en les ditz estaples come en les autres Courtes du Roy solonc la forme dicell ordinance tanqe jatarde qils ent ount este restreintz & empeschiez par colour dun autre estatuit fait en le parlement tenuz a Westm' lan du regne le Roi H. pier nostre Seignur le Roi qorest seconde par quell estatut pur les graundes meschiefs & desheritances qe de jour en autre aveignoient parmy le Roialme dEngleterre sibien en cas de morte de home come en cas de franc tenement & en autres cases par ceux qi passerent es enquestes en les dites cases qi feurent communes jourrours & autres qi navoient qe poie de vivere mes par tielx enquestes & les queux navoient rien a perdre par cause de lour faux serementz parount ils le pluis legierment offenderent lour consciences & pur correction & amendement ent avoir ordine fuist & establie qe null persone soit admys de passer en ascun enquest triall de mort de homine ne en ascun enqueste parentre partie & partie en plee reall ou personell dount le dette & lez damages declarez amountent a xl. marcs si mesme la persone nait terres ou tenementz del annuel value de xl. s. par an outre les reprises dicelles A cause de quell restreint & empeschement ensy faitz as ditz merchantz aliens plusours de mesmes lez marchantz aliens lour ount retraihez & se retrahent de jour en autre & eschuent de venir & converser par decea & veri-

*Ex Rot. in Turr.* Lond.

semblable est qe trestoutz mesmes les marchantz aliens lour voillent departier hors de mesme le Roialme si le dit darrein estatut ne soit pluis overtement declarez & lez ditz merchantz aliens reulez governez & demesnez en tielx enquestes solonc la fourme del primer ordinaunce desuisdite a tresgraunde amenusement des subsidees du Roi & grevouse perde & dammage a tout son Roialme avauntdit. Nostre dit Seignur le Roi considerant les premisses & qil ne fuist my lentention du dit nadgairs Roi ne de les Seignurs espirituelx & temporelx de son dit parlement de deroger ou prejudicer a le dit primer ordinaunce par le dit darrein estatut & qe mesme le darrein estatut fuist fait a cause des mischiefs & disheritances qavenoient per lez faux seremente des communes jurrours du Roialme sicome il appiert par expresses paroles de mesme lestatut & coment les ditz merchantz aliens ne sont mye communes jurrours ne enheritables deinz le dit Roialme ne purront purchacer nenjoier ascuns terres ou tenementz en icell saunz especiall licence du Roi. Et voillant pur ceo mesme nostre Seignur le Roi purveier pur le bien & profit de luy & de son dit Roialme & pur escheuer les dammages & inconveniences qi purront legierment avenir en cell partie & auxi pur doner as ditz merchantz aliens de greindre corage & talent de venir ove lour merces & merchandises en cest Roialme de ladvys & assent des Seignurs espirituelx & temporelx esteantz en cest present parlement ad declaree le dit darrein esta-

No. 31. 8 Henry VI. c. 29.

"Debt and the Damages declared do amount to forty "Marks, except the same Person have Lands or Tenements to the yearly Value of "forty Shillings above all "Charges; because of which "Restraint and Impeachment "so made to divers Merchants "Aliens, many of the same "Merchants Aliens have withdrawn and daily do withdraw them, and eschew to "come and be conversant on "this Side the Sea, and likely "it is, that all the same Merchants Aliens will depart out "of the same Realm of *England* "if the said last Statute be not "more plainly declared, and "the said Merchants Aliens "ruled, governed, and demeaned in such Inquests, according to the first Ordinance "aforesaid, to the great diminishing of the King's Subsidies, and grievous Loss and "Damage of all his said Realm "of *England*. Our Lord the "King, considering the Premisses, and how that it was "not the Meaning of the said "late King, nor of the Lords "Spiritual and Temporal of the "said Parliament, to hinder "or prejudice the said first "Ordinance by the said last "Statute, and that the said last "Statute was made in respect "of the Mischiefs and Disherisons that happened by the "false Oaths of the common "Jurors of the Realm of *England*, as it appeareth by express Words of the same Statute, and how that the said "Merchants Aliens be not "common Jurors, nor inhabiting within the said Realm, "nor may not purchase nor "enjoy any Lands or Tene-

No. 31.
8 Henry VI. c 29

A Confirmation of the Statute of 28 Ed 3. c. 13 ordaining that an Inquest shall be *De medietate linguæ*, where an Alien is Party

And the Statute of 2 H. 5. stat. 2. c. 3. limited to Inquests taken between Denizen and Denizen.

"ments in the same, without "the King's special Licence;" 'and the same our Lord the 'King, willing therein to pro- 'vide for the Weal and Pro- 'fit of him and all his Realm, 'and to eschew the Damages 'and Inconveniences which 'may easily happen in this 'Behalf, and also to give 'to the said Merchants Aliens 'the greater Courage and De- 'sire to come with their Wares 'and Merchandizes into this 'Realm, by the Advice and 'Assent of the Lords Spiritual 'and Temporal, being in this 'present Parliament, hath de- 'clared the said last Statute, 'made in the Time of his Fa- 'ther, to be in no wise preju- dicial to the said Ordinance, nor to extend itself but only 'to the Inquests to be taken 'betwixt Denizen and Deni- 'zen, and not to other Inquests 'and Proofs aforesaid; and the 'said first Ordinance to be ef- 'fectual and stand in force, 'and to be put in due Execu- 'tion according to the Form of 'the same, notwithstanding 'the said last Statute, or that 'the Aliens have not Lands or 'Tenements to the Value of 'forty Shillings by the Year, 'according to the Purport of 'the same last Statute and Or- 'dinance.'

*Ex Rot. in Turr.* Lond.

tut fait en temps de son dit pier noun estre ascunement prejudiciall au dite primere ordinaunce ne se extendre mes tantsoulement a les enquestes aprendres parentre deinszein & deinszein & nemy a les autres enquestes & proeves desusdites & la dite primere ordinance destre effectuell & estoier en sa force & destre myz en due execution solonc la forme dicell le dit darrein estatut ou ceo qe lez aliens eiant my terres ou tenementz a le value de xl. s. par an solonc la contenue de mesme le darrein estatut nient contristeant.

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## No. 32.

11 Henry VI. c. 4.—The Plaintiffs in Attaint shall recover their Costs and Damages.

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## No. 33.

15 Henry VI. c. 5.—What Sort of Persons may be impanelled upon an Attaint.

No. 34.

18 Henry VI. c. 2.—They which have Gavelkind Lands to the yearly Value of twenty Pounds, may be return-ed in Attaints.

No. 35.

8 Edward IV. c. 3.—An Act for Jurors in Middlesex.

No. 36.

7 Henry VII. c. 5.—*Riens deins le gard* shall be no Challenge upon any Issue to be tried in London.

No. 37.

11 Henry VII. c. 21.—The Ability of every Man who shall be impanelled in any Inquest or Attaint in *London*.

No. 38.

11 Henry VII. c. 24.—An Attaint shall be maintainable against the Party and Petty Jury: The Process therein, the Ability of the Jurors, the Pleas of the Defendant and Petit Jury, and their Punishment being attainted. Panels returned by the Sheriff to inquire for the King, may be reformed by the Justices. *Last continued by* 1 *H.* 8. *c.* 11.

No. 39.

3 Henry VIII. c. 12.—The Act that Justices may return Impanels for the King by their Discretions.

'WHEREAS great Extortions and Oppressions be, and 'have been within the more Party of all the Counties 'and Shires within this Realm of *England*, by the Subtilty and 'untrue Demeanour of Sheriffs and their Ministers, committed 'and done unto many Persons in great Number of the King's 'Subjects, by mean and making and returning at every 'Sessions holden within the said Counties and Shires, for the 'Body of the Shire, in taking and putting in, and returning of 'Names of such Persons, as for the singular Advantage, Be-'nefit, and Gain of the said Sheriffs and their Ministers, will

No. 39. 3 Henry VIII. c. 12.

No 39. 3 Henry VIII. c. 12. 'be wilfully forsworn and perjured, by the sinister Labour of 'the said Sheriffs and their Ministers; by reason whereof 'many and divers substantial Persons (the King's true Subjects) 'contrary to good Equity and Rightwiseness, have divers 'Times, and many wrongfully, been indicted of divers Mur-'ders, Felonies, and other Misbehaviour, by their Covin and 'Falsehood, to the utter undoing of their Lives, Loss of their 'Goods and their Lands; by reason whereof they and every 'of them, in avoiding the untrue Trouble and Vexation which 'to them might come and ensue by reason and occasion of the 'same false Indictments, and also sometime by Labour of the 'said Sheriffs, divers great Felonies and Murders concealed, 'and by the said Persons also by the said Sheriffs and their 'Ministers partially returned, not presented, be and have been 'compelled to make Fines and give Rewards to the said She-'riffs and their Ministers;' &c. &c.

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No. 40.

4 Henry VIII. c. 3.—The Act concerning Juries in *London*.

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No. 41.

5 Henry VIII. c. 5.—An Act concerning Jurors in *London*.

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No. 42.

23 Henry VIII. c. 3.—An Act against Perjury and untrue Verdicts.

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No. 43.

23 Henry VIII. c. 13.—An Act for Trial of Murders in Cities and Towns.

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No. 44.

26 Henry VIII. c. 4.—For Jurors in Wales.

## No. 45.

## 35 Henry VIII. c. 6.—The Bill for the better Appearance in the *Nisi prius*. P.

[Made perpetual 2 and 3 Edward VI. c. 32.]

No. 45. 35 Henry VIII. c. 6.

V. AND for a more speedy Trial of Issues to be tried by the Verdict of twelve Men, hereafter to be had,

Tales de circumstantibus at the Plaintiff's or Defendant's Request.

VI. Be it further enacted by the Authority aforesaid, That in every such Writ of *Habeas Corpora*, or *Distringas*, with a *Nisi Prius*, where a full Jury shall not appear before the Justices of Assizes or *Nisi Prius*, or else after Appearance of a full Jury, by Challenge of any of the Parties the Jury is like to remain untaken for Default of Jurors, that then the same Justices, upon Request made by the Party Plaintiff or Defendant, shall have Authority by Virtue of this Act to command the Sheriff, or other Minister or Ministers to whom the making of the said Return shall appertain, to name and appoint, as often as Need shall require, so many of such other able Persons of the said County then present at the said Assizes or *Nisi Prius*, as shall make up a full Jury; which Persons so to be named and impanelled by such Sheriff, or other Minister or Ministers, shall be added to the former Panel, and their Names annexed to the same.

Challenges of the Tales.

VII. And that every of the Parties shall and may have his or their Challenge to the Jurors so named, added, and annexed to the said former Panel by the said Sheriff or other Minister or Ministers, in such wise as if they had been impanelled upon the *Venire facias* awarded to try the said Issue; and that the said Justices shall and may proceed to the Trial of every such Issue with those Persons that were before impanelled and returned, and with those newly added and annexed to the said former Panel by Virtue of this Act, in such wise as they might or ought to have done, if all the said Jurors had been returned upon the Writ of *Venire facias* awarded to try the said Issue.

VIII. And that all and every such Trial had after the said first Day of *April*, shall be as good and effectual in the Law, to all Intents, Constructions and Purposes, as if such Trial had been had and tried by twelve of the Jurors impanelled and returned upon the Writ of *Venire facias* awarded to try such Issue.

IX. And in case such Persons as the said Sheriff, Minister or Ministers, shall name and appoint, as is aforesaid, or any of them, after they shall be called, be present, and do not appear, or after his or their Appearance done wilfully withdraw him or themselves from the Presence of the Court, that then such Justices shall and may set such a Fine upon every such Juror making Default, or wilfully withdrawing himself, as is aforesaid, as they shall think good by their Discretion; the said Fine to be levied in such Manner and Form as Issues forfeited and lost by Jurors for Default of their Appearance at the Common Law have been accustomed to be levied.

No. 46.

4 and 5 Philip and Mary, c. 7.—An Act to make up the Jury with Circumstantibus, where the King and Queen's Majesty is a Party.

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No. 47.

5 Elizabeth, c. 25.— An Act to fill up Juries lacking in *Wales de Circumstantibus.*

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No. 48.

14 Elizabeth, c. 9.—An Act declaring that the Tenant and Defendant may have a *Tales de Circumstantibus,* as well as the Demandant or Plaintiff.

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No. 49.

18 Elizabeth, c. 12.—An Act for Trial of *Nisi Prius* in the County of *Middlesex.*

No. 49. 18 Elizabeth, c. 12.

Issues joined in the Chancery, King's Bench, Common Pleas, or Exchequer may be tried by Nisi Prius in Westminster Hall.

'WHEREAS heretofore all Issues joined in any of the 'Courts of Record at *Westminster,* triable in the County 'of *Middlesex,* have been usually tried at the Bars in the said 'Courts in *Westminster:* And whereas a great Number of Ac- 'tions have of late Years been brought in the said County of '*Middlesex,* for Speediness of Trial, and that for small Causes, 'by reason whereof the Judges of the same Courts have 'not only been letted and hindered in their Proceedings in 'Matters of great Weight depending before them by Demur- 'rer or otherwise, to the great Delay of Justice, and Occasion 'of great Expences and Charges of a Number of the Queen's 'Majesty's most loving Subjects, but also to the great 'Trouble and Charge of the Freeholders of the said County, 'who are compelled to give daily Attendance, at the several 'Bars of the same several Courts for the Trial of the said 'Issues:' For Reformation whereof, Be it enacted by the Queen's most excellent Majesty, our Sovereign Lady, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from henceforth the Chief Justice of *England,* for the Time being, upon Issues joined or to be joined in the Court called the King's Bench, or in the Court of Chancery, the Chief Justice of the Common Pleas for the Time being, upon Issues joined or to be joined in the Court of Common Pleas, and the Chief Baron of the Exchequer for the Time being, upon Issues joined or to be joined in the Court of

No. 49. 18 Elizabeth, c. 12.

the Exchequer, or in the Absence or Default of any of them, two other Judges or Barons of the same several Courts where it shall happen either of the same Chief Justices, or the Chief Baron for the Time being, to be absent, shall or may at their Discretions, within the said Hall called *Westminster-Hall*, in *Westminster*, or in the Place where the Court of Exchequer is commonly kept in the said County of *Middlesex*, as Justices of *Nisi Prius* for the said County of *Middlesex*, within the Term-time, or within four Days next after the End of every or any Term severally, try all Manner of Issues joined or to be joined in any of the said several Courts, which by the ordinary Course of the Laws of the Realm ought to be tried in any of the said Courts by an Inquest of the said County of *Middlesex*: And that Commissions and Writs of *Nisi Prius* shall be awarded in such Cases, and in such Form, as they are or have been used in any other Shire of this Realm: And that it shall be lawful for any Person or Persons from henceforth, upon reasonable Warning given to the adverse Party or his or their Attorney, as hath been accustomed in such like Cases, to take or sue forth Writs and Records of *Nisi Prius*, for the Trial of the said Issues in the said County of *Middlesex*, as they may do upon any Issue joined, triable in any other County, and thereupon take the Jury in such Manner and Form, and with awarding of *Tales de Circumstantibus*, and awarding the Nonsuit, as is used for the Trial of Issues joined, or Nonsuits to be awarded, in the said Courts, or any of them, triable within the City of *London*, or within any other County of this Realm of *England*: And that the Sheriffs of the said County of *Middlesex*, for the Time being, shall make Return of all Writs of *Nisi Prius* which shall be delivered to them, or to their or to any of their sufficient Deputy for the Time being, before the said Judges, Baron or Barons and every of them, and shall give their Attendance upon the said Justices, Baron and Barons, as well for the returning of such *Tales* as shall be prayed *de Circumstantibus*, for the Trying of the said Issues, as for the Doing and Executing of all other Thing and Things to the Office of Sheriff in such Case belonging and appertaining: And that all Persons to be impanelled in such Juries, and the Parties to the same Issues and Suits, and the Witnesses for the same, shall be charged and bound in such and the like Sort, and upon like Pains and Penalties for their not Appearance and Attendance, or for their or any of their Misdemeanour or Default before the said Justices of *Nisi Prius*, as they should have been, if the same Issue had been tried in the Court from whence the *Nisi Prius* thereof was awarded: All which several Trials so to be had before the said several Justices, Baron or Barons, shall by Authority of this present Parliament stand and be as good and available in Law, as if the same had been tried in the Term-time, at the Bar in the Court where such Issue was joined or triable; any Law, Usage, or Custom heretofore made, used or accustomed to the contrary hereof in any wise notwitstanding.

By 12 Geo I. c. 31, § 1, the Trial may be within eight Days after Term.

The Sheriff of Middlesex his Attendance.

The Jurors and Parties Witnesses bound by the Trial.

## No. 50.

### 27 Elizabeth, c. 6. — An Act for returning of sufficient Jurors, and for better Expedition of Trials.

No. 50. 27 Elizabeth, c. 6

'FOR the returning of more able and more sufficient Jurors 'for Trials to be hereafter had between Party and Party, 'and for Reformation of Abuses in Sheriffs and other Ministers, 'who for Reward oftentimes do spare at home the most able 'and sufficient Freeholders, and return the poorer and simpler 'Sort, least able to discern the Causes in Question, and most 'unable to bear the Charges of Appearance and Attendance in 'such Cases;' Be it ordained and enacted, &c.

[I. What Jurors and Issues shall be returned; how the Sheriff shall be punished for returning one summoned that is not, or for taking Reward to spare any, &c. Venire facias. Where each Juror must dispend £4 of Freehold.]

[II. Issues returned upon Jurors.]

[III. Issues returned upon a Juror not summoned.]

Receiving Reward for not returning of a Juror.

IV. And be it further enacted by the Authority aforesaid, That if any Sheriff, Under Sheriff, Sheriff's Deputy, Sheriff or Under Sheriff's Clerk, or any Bailiff of Franchise, shall at any Time after the End of this present Session of Parliament, receive, take or have, by himself or by any other, any Sum of Money, Reward or any other Profit, directly or indirectly, or do take any Promise, make any Agreement or Assent, to have any Sum of Money, Reward or other Profit, directly or indirectly, of any Person or Persons, for the sparing, not warning, or not returning of any Person to be sworn as a Juror, for the Trial of any Issue joined or to be joined in any of the Queen's Majesty's Courts aforesaid, or before any Justices; that then every Sheriff, Under Sheriff, Sheriff's Deputy, Sheriff or Under Sheriff his Clerk, or Bailiff of Liberty or Franchise, so offending, to forfeit for every such Offence the Sum of five Pounds; the one Moiety thereof to our Sovereign Lady the Queen's Majesty, and the other Moiety thereof to such Person and Persons as will sue for the same in any Court of Record, by Action of Debt, Bill, Plaint or Information, wherein no Essoin, Protection, or Wager of Law shall be allowed to the Defendant.

[V. Two Hundreders sufficient in a personal Action.]

[VI. Other Challenges.]

[VII. Juries returned in a Corporate Town, or Wales.]

## No. 51.

### 27 Elizabeth, c. 7.—An Act for Reformation of Abuses in Collection of Issues lost by Jurors.

'WHEREAS there are within this Realm of *England*, in sundry Counties of the same, divers Freeholders of one Name, and often and sundry Times some one or more of them being returned and impanelled in Juries for Trial of Matters between Party and Party; and if it happen any one of them so returned to make Default, or lose Issues, when the same are estreated to be levied, the Bailiff or other Collectors thereof, for Lucre and Gain, do demand and require the same of every one within the same County that is of that Name; and do persuade every Person that is dwelling in that County and so named, that he is the Party that hath lost those Issues, and compel him to pay the same by the Distress of his or their Goods and Chattels, to their great Molestation and Trouble; and yet nevertheless many Times do detain and keep all or the more Part of the Issues so collected, to their own Use, in Contempt of the Queen's Majesty's Laws, and to the great Grievance of her loving Subjects, and contrary to all Equity and good Conscience:'

No. 51. 18 Elizabeth, c 7. No Jurors shall be returned without Addition of his Dwelling-place, and how Issues lost shall be levied.

[II. The Dwelling-place of every Juror shall be returned. In every Extract of Issues against a Juror, his Addition shall be put.]

[III. What Officers have Authority to hear and determine the Offences aforesaid.]

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## No. 52.

### 16 and 17 Charles II. c. 3.—An Act for the returning of able and sufficient Jurors.

* This was a temporary Act, to continue three Years. The Jurors for the Trial of Issues were required to have £40 per Annum, freehold.

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## No. 53.

### 4 and 5 William and Mary, c. 24.—An Act for reviving, continuing, and explaining several Laws therein mentioned which are expired and near expiring.

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'XV. AND whereas a certain Act made at the Session of Parliament held in the Sixteenth and Seventeenth Years of the Reign of the late King *Charles* the Second, intituled, "An Act for returning of able and sufficient Jurors," is expired;' be it enacted by the Authority aforesaid, That all Jurors (other than Strangers upon Trials *per Medietatem Linguæ*) who are to be returned for Trials of Issues joined in any of the Courts of King's Bench, Common Pleas, or Exchequer, or before Justices of Assize, or *Nisi prius*, Oyer and Terminer, Gaol Delivery, or General Quarter Sessions of the Peace,

No. 53. 4 and 5 William & Mary, c. 24. 16 & 17 Ch. 2. c 3

All Jurors to have 10l. per Ann.

No. 53. 4 and 5 William & Mary, c. 24. from and after the first Day of *May*, One thousand six hundred ninety-three, in any County of this Realm of *England*, shall every of them have in their own Name, or in Trust for them, within the same County, Ten Pounds by the Year at least above Reprizes, of Freehold or Copyhold Lands or Tenements, or of Lands and Tenements of antient Demesne, or in Rents, or in all or any of the said Lands, Tenements, or Rents, in Fee-simple, Fee-tail, or for the Life of themselves, or some other Person: And that in every County of the Dominion of *Wales*, every such Juror shall then have within the same County Six Pounds by the Year at least, in Manner aforesaid above Reprizes. All which Persons having such Estates as aforesaid, are hereby enabled and made liable to be returned and serve as Jurors for the Trial of Issues before the Courts and Justices aforesaid; any Law or Statute to the contrary in any wise notwithstanding. And if any of a lesser Estate and Value shall be respectively returned upon any such Jury, it shall be a good Cause of Challenge, and the Party returned shall be discharged upon the said Challenge, or upon his own Oath of the Truth of the said Matter. And that no Juryman's Issues, making Default, shall be saved, but by special Order of the Court or Judges before whom the Issue is to be tried, for some reasonable Cause proved upon Oath before the same Court or Judges; and all such Issues shall be duly estreated and levied; and the Writ of *Venire facias*, which from and after the Time aforesaid shall be awarded and directed for the impanelling of Juries in Causes aforesaid, within any County of *England*, shall be after this Form:

Welch Jurors 6l. per Ann.

Issues shall be duly estreated. Continued with 7 W. 3. c. 32.

Form of Venire. REX, &c. præcipimus, &c. quod venire fac' coram, &c. Duodecim liberos & legales homines de Vicineto de A. quor' quilibet habeat Decem librat' Terræ, Tenementor' vel Redituum per Annum ad minus, per quos, &c. & qui nec, &c.

And the Residue of the said Writ shall be after the antient Manner; and that the Writs which shall be awarded and directed for the returning of Juries within the Dominion of *Wales*, shall be made in the same Manner, altering only the word *Decem* for *Sex*; and that upon every such Writ or Writs of *Venire facias*, the Sheriff, Coroner, and other Ministers of each respective County in *England* and *Wales*, unto whom the making of the Panel shall appertain, shall not return in any such Panel any Person, unless he shall then have Ten Pounds, or Six Pounds, respectively by the Year at least, as aforesaid, in the same County where the Issue is to be tried; upon Pain to forfeit for every Person being returned in any such Panel, that shall not then have Ten Pounds or Six Pounds respectively as aforesaid, the Sum of Five Pounds to their Majesties, their Heirs and Successors.

Penalty upon Sheriff otherwise returning.

Penalty upon Sheriff returning without six Days Summons, &c.

XVI. And be it further enacted, That no Sheriff or Bailiff of any Liberty or Franchise, or any of their or either of their Ministers, shall return any such Person or Persons as aforesaid,

to have been summoned by them, or any of them, unless such Person and Persons shall have been duly summoned by the Space of Six Days at the least, before the Day on which they ought to make their Appearance; nor shall directly or indirectly take Money or other Reward to excuse the Appearance of any Juror, by any of them to be summoned or returned, upon Pain to forfeit for every such Offence the Sum of Ten Pounds to their Majesties, their Heirs and Successors.

No. 53. 4 and 5 William & Mary, c. 14.

XVII. Saving nevertheless to all Cities, Boroughs, and Towns Corporate, their antient Usage of returning Jurors of such Estate, and in such manner, as heretofore has been used and accustomed; any Thing in this Act contained to the contrary notwithstanding.

Boroughs, &c. excepted.

XVIII. Provided nevertheless, That it shall be lawful to return any Person to serve upon the *Tales* in any County within the Kingdom of *England*, who shall have within the same County Five Pounds by the Year, above Reprizes, in Manner aforesaid, and not otherwise.

Tales 5l. per Ann.

XIX. Provided nevertheless, That it shall be lawful to return any Person to serve upon the *Tales* in any County within the Dominion of *Wales*, who shall have within the same County Three Pounds by the Year, above Reprizes, in Manner aforesaid, and not otherwise.

Welch Tales 3l. per Ann.

XX. And be it further enacted by the Authority aforesaid, That no Fee or Reward whatsoever shall be taken by any Sheriff, Clerk of Assizes, or any other Officer or Person whatsoever, for the returning of any *Tales*, or upon the Account of any *Tales* returned, upon pain of forfeiting for every such Offence the Sum of ten Pounds, whereof one Moiety to be to the Use of the Prosecutor, and the other Moiety to the Use of their Majesties, their Heirs and Successors, to be recovered by Action of Debt, Bill, Plaint, or Information, wherein no Essoin, Protection, or Wager of Law, or more than one Imparlance shall be allowed.

10l. Penalty upon Officer taking Fee for returning any Tales.

XXI. And be it further enacted, That no Writ *de non ponendis in Assisis et Juratis*, shall be hereafter granted, unless upon Oath made, that the Suggestions upon which the said Writ is granted are true.

Non ponend' grantable upon Oath only.

XXII. And be it enacted, That so much of this present Act as does relate to the returning of Jurors, shall be in Force for the Space of Three Years, from the said first Day of *May*, one thousand six hundred ninety-three, and from thence to the End of the next Session of Parliament. [Farther continued by 9 Geo. 1. c. 8. §. 2.]

Act to continue three Years, as to Return of Jurors.

## No. 54.

### 6 William and Mary, c. 4.—An Act for exempting Apothecaries from serving the Offices of Constable, Scavenger, and other Parish and Ward Offices, and from serving upon Juries.

[II. Apothecaries within London, and seven Miles thereof, exempt from Offices.]

[III. Country Apothecaries who have served seven Years exempted from Offices.]

[IV. This Act to continue seven Years.]

[Continued 1 Anne, c. 11; and made perpetual 9 Geo. I. c. 8.]

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## No. 55.

### 7 and 8 William III. c. 32.—An Act for the Ease of Jurors, and better regulating of Juries.

No. 55.
7 and 8 William III. c. 32.
3 Geo. 2. c. 25.

'WHEREAS for Trials of Causes upon Writs of *Nisi* '*Prius*, and other Causes at Assizes, the Sheriffs do 'return a competent Number of Jurors for such Services; but 'it often happens, that many of the Causes, which are brought 'down for Trial, do not go on to be tried at the first Assizes, 'but are brought down again to be tried at some other subsequent 'Assizes, whereby the Jurors returned to try such Causes are 'compelled to attend at several Assizes for Trial of one and 'the same Cause, to their very great Expence and Trouble; 'and forasmuch as by Partiality and Favour of Sheriffs, the 'Corruption of Officers, and many other evil Practices, the 'Service of Jurors has been found to be very burdensome and 'grievous:' For Remedy whereof, be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if at any Time hereafter, any Plaintiff or Demandant, in any Cause depending in any of the Courts at *Westminster*, which shall be at Issue, shall sue forth, or bring to any Sheriff, any Writ of *Venire Facias*, upon which any Writ of *Habeas Corpora* or *Distringas*, with a *Nisi Prius*, shall issue, in order to the Trial of such Issue at the Assizes, and that such Plaintiff or Demandant shall not proceed to the Trial of the said Issue at the said First Assizes after the *Teste* of every such Writ of *Habeas Corpora*, or *Distringas*, with a *Nisi Prius*, that then, and in all such Cases, (other than where Views by Jurors shall be directed), the Plaintiff or Demandant, whensoever he shall think fit to try the said Issue at any other Assizes, shall sue forth and prosecute a new Writ of *Venire Facias* directed to the Sheriff in this Form:

If Plaintiff sue forth a Ven' fac' &c, in order to Trial, and proceed not, the Issue may be tried at any other Assize.

'Quod de novo venire facias coram, &c. duodecim liberos '& legales homines de vicineto de A. quorum quilibet habeat

'decem librat' terræ tenementor' vel reddituum per annum ad 'minus, per quos, &c. Et qui nec, &c.'

No. 55. 7 and 8 William III. c. 32.

And the Residue of the said Writ shall be after the ancient Manner; which Writ being duly returned and filed, a Writ of *Habeas Corpora*, or *Distringas*, with a *Nisi Prius*, shall issue thereupon, (for which the ancient and accustomed Fees shall be taken, and no more, as in the Case of the *Pluries habeas Corpora*, or *Distringas*, with a *Nisi Prius*), upon which the Plaintiff or Demandant shall and may proceed to Trial, as if no former Writ of *Venire facias* had been prosecuted or filed in that Cause, and so *toties quoties* as the Case shall require: And if any Defendant or Tenant, in any Action depending in any of the said Courts, shall be minded to bring to Trial, any Issue joined against him, when by the Course in any of the said Courts he may lawfully do the same by *Proviso*, such Defendant or Tenant shall or may, of the issuable Term next preceding such intended Trial, to be had at the next Assizes, sue out a new *Venire facias* to the Sheriff, in Form aforesaid, by *Proviso*, and prosecute the same by Writ of *Habeas Corpora*, or *Distringas*, with a *Nisi Prius*, as though there had not been any former *Venire facias* sued out or returned in that Cause, and so *toties quoties* as the Matter shall require.

Defendant trying any Issue joined against him, may sue a new Ven' Fac', and prosecute the same by Hab' Corp' or Distringas.

II. And be it also enacted and declared by the Authority aforesaid, That every Writ of *Venire facias*, and every Writ of *Habeas Corpora*, or *Distringas*, with a *Nisi Prius*, sued out and prosecuted, according to the Purport and Direction of this Act, and all Trials, Entries, and Proceedings thereupon, shall be good and warrantable by Law, and not be erroneous, or be assigned or assignable for Error; any former Law or Usage to the contrary thereof in any wise notwithstanding.

Writs of Ven' Fac', &c., to be good in Law.

'III. And forasmuch as very frequently unfit Persons are 'named by Sheriffs or their Under Sheriffs to serve as Jurors 'upon the *Tales*, where a *Tales* may be prayed or demanded, 'by Virtue of the Statute in that Case provided:' Be it further enacted by the Authority aforesaid, That in every Writ of *Habeas Corpora*, or *Distringas*, with a *Nisi Prius*, where a full Jury shall not appear before the Justices of Assize or *Nisi Prius*, or else after Appearance, where by Challenge of either of the Parties the Jury is like to remain untaken for Default of Jurors, the Sheriff or other Minister or Ministers, to whom it shall appertain to return the Tales-men, shall, upon the awarding the *Tales*, at the Command of such Justice or Judge of Assize, return Freeholders or Copyholders of the County where the Cause is to be tried, who shall be returned upon some other Panel to serve at the same Assizes, and shall be then attending the Court where such Trial is to be had, to serve upon such *Tales*, and not any others, if so many out of the other Panels be present in Court, or can there be found; and that either of the Parties, Plaintiff or Defendant, Demandant or Tenant, shall and may have his Challenge to

On Writs of Hab' Corp', &c. on Default of a sufficient Number of Jurors, others to be returned, 35 H. 8. c. 6.

Plaintiff or Defendant may challenge such

No. 55. 7 and 8 William III c 32.

Jurors, as if impanelled on the Ven' Fac'.

Judge may proceed to Trial.

the Jurors so named, added, and annexed to the said former Panel, by the Sheriff or other Minister or Ministers aforesaid, in such wise, as if they had been impanelled upon the *Venire facias* awarded to try the Issue; and that the said Justices and Judge of Assize shall and may proceed to the Trial of every such Issue, with those Persons who were before impanelled and returned, with these Tales-men so newly added and annexed to the said former Panel by virtue of this Act, in such case as he or they might and ought to have done, if all the said Jurors returned upon the Writ of *Venire facias* awarded to try the said Issue had appeared to try the same; and that all and every such Trial had, after the four and twentieth Day of *June* one thousand six hundred ninety six, shall be good and effectual in the Law, to all Intents, Constructions, and Purposes whatsoever: And in case any such Freeholder, or Copyholder, as the said Sheriff, or Minister or Ministers shall return upon the *Tales*, as is aforesaid, being present at such Return made, shall be called, and not appear, or after his or their Appearance, shall wilfully withdraw himself from the said Service, then in such Case the Justices or Judge of Assize, who shall award such *Tales*, shall and may set a Fine upon every such Person making default, or wilfully withdrawing himself.

Freeholder, &c. not appearing to be fined.

Constables, &c. to give in a List of Persons fit to serve on Juries, with their Places of Abode, and Titles.

IV. And that all Sheriffs of Counties may be the better informed of Persons qualified, who are to be returned for Trials of Issues joined in the Courts of *Chancery, King's Bench, Common Pleas*, or *Exchequer*, or to serve upon Juries at Assizes, Sessions of *Oyer* and *Terminer*, General Gaol Delivery, and Sessions of the Peace: Be it further enacted by the Authority aforesaid, That all Constables, Tythingmen, and Headboroughs of Towns in each County, or their Deputies, or some or one of them, shall yearly, at the General Quarter Sessions of the Peace to be holden for each County, Riding, or Division, or any Part thereof, in the Week after the Feast of Saint *Michael* the Archangel, upon the first Day of the said Sessions, or upon the first Day that the said Sessions shall be held by Adjournment at any other particular Division or Place, return and give a true List in Writing of the Names and Places of Abode of all Persons within the respective Places, for which they serve, qualified to serve upon such Juries, with their Titles and Additions, between the Age of one and twenty Years and the Age of seventy Years, to the Justices of the Peace in open Court; which said Justices, or any two of them, at the said Sessions, in the respective Counties, Ridings, or Divisions, shall cause to be delivered a Duplicate of the aforesaid returned List, by the Clerks of the Peace of every County or Riding, to the Sheriffs or their Deputies, on or before the first Day of *January* next following, and cause the said Lists to be fairly entered into a Book, by the Clerk of the Peace, to be by him provided and kept for that Purpose amongst the Records of the said Court of Sessions; and no Sheriff shall impanel or return any Person or Persons to try any of the Issues joined in any of the said Courts, or to be or serve in any Jury at the

Constables subscribing such Lists in the Presence of one

Assizes, Sessions of Oyer and Terminer, Gaol Delivery, or Sessions of the Peace, that shall not be named or mentioned in the said List; and any Constable, Tythingman, or Headborough, failing at any Time to make the Return aforesaid, shall forfeit and incur the Penalty of five Pounds to his Majesty and Successors, to be recovered by Bill, Plaint, or Information.

No. 55. 7 and 8 William III c. 32. Justice, &c. is sufficient by 3 Geo 2. c. 25. sect. 6

'V. And that the Summons of Persons qualified for the 'Services aforesaid may not be so uncertain as hath been prac'tised by Officers therein, to the great Injury and Grievance of 'Persons liable to the aforesaid Services,' be it further enacted by the Authority aforesaid, That every Summons of any Person qualified to any of the aforesaid Services shall be made by the Sheriff, his Officer or lawful Deputy, six Days before at the least, shewing to every Person so summoned the Warrant, under the Seal of the Office wherein they are nominated and appointed to serve; and in case any Juror so to be summoned, be absent from the usual Place of his Habitation at the Time of such Summons, in such Case Notice of such Summons shall be given by leaving a Note in Writing, under the Hand of such Officer, containing the Contents thereof, at the Dwelling-house of such Juror, with some Person there inhabiting in the same.

Summons to be made by the Sheriff under Seal six Days before the Juror is to serve.

VI. And, to the End that Sheriffs may not incur any Penalty, to suffer any Damage, by summoning or returning any Person named in the Lists or Books of Jurors transmitted to them from the respective Quarter-Sessions as aforesaid, for not having such Estates as qualify such Persons to be Jurors; be it enacted by the Authority aforesaid, That the said Return to the said Justices shall be a good Excuse and Bar in Law for the said Sheriff for such Summons and Returns; and if any Action or Information shall be brought or prosecuted against any Sheriff for such Return, the said Sheriff may plead the General Issue, and give this Act in Evidence; and if the Plaintiff be nonsuited, discontinue his Action, or if a Verdict be given for the Defendant, or a *Noli prosequi* be entered in any Information, or a Verdict pass for the Defendant thereupon, the Plaintiff or Informer shall pay treble Costs, to be awarded by the Court, in which such Action or Information was prosecuted, and levied by usual Process: And if the said Sheriff, his Deputy or Deputies, Bailiff or Bailiffs, shall summon and return any Freeholder or Copyholder, to any of the aforesaid Services, otherwise than as aforesaid, or in any Ways neglect his or their Duty or Duties in the Service or Services of them required respectively by this Act, or excuse any Person or Persons for Favour or Reward, or allow of any Writ of *Non ponendis in Assizis & Juratis*, or other Writ, to excuse or exempt any Person or Persons from the Service of any Jury or Juries, under the Age of seventy Years, such Sheriff, Deputy, or Bailiff shall, for every Transgression committed against this Act, forfeit the Sum of twenty Pounds, to be recovered by such Party or Parties grieved or injured, or whom else shall sue for the same, in any of the Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information, wherein no

Return to the Justices a good Excuse for the Sheriff, &c.

No. 55.
7 and 8 William III. c. 32.

Essoin, Privilege, Protection, or Wager of Law, shall be allowed, nor any more than one Imparlance.

None to be a Juryman in Yorkshire above once in four Years, City of York and Kingston upon Hull excepted.

Explained by 10 Ann. c. 14. sec. 5. as to Sessions of the Peace in Yorkshire.

'VII. And whereas the County of *York* (being a very large 'County) hath many Persons therein qualified to serve upon 'Juries at Assizes, General Gaol Delivery, and Sessions of the 'Peace; yet by the Corruption of Sheriffs, and their Under 'Officers, the Burden of that Service is forced upon a very few, 'to their Oppression and Grievance;' Be it therefore further enacted by the Authority aforesaid, That from and after the four and twentieth Day of *June* one thousand six hundred ninety-six, no Person shall be returned or summoned to serve upon any Jury at the Assizes, or General Gaol Delivery, to be holden for the said County of *York*, or at any Sessions of the Peace to be holden for any Part thereof (the City of *York*, and County of the said City, and Town and County of *Kingston* upon *Hull* excepted) above once in four Years: And to the End it may appear what Persons have been summoned, and have served as Jurors at any former Assize or Gaol Delivery to be holden for the said County of *York*, or at any Sessions of the Peace holden for any Part of the said County of *York*; every Sheriff of the said County for the Time being shall prepare and keep a Book or Register, wherein the Names of all such Persons who have served as Jurors, with their Additions and Places of Abode, and the Times and Places of such their Services, shall be alphabetically entred and registred, which Books and Registers shall from Time to Time be delivered over to the succeeding Sheriff of the said County, within ten Days after he shall be sworn into his Office; and every Juror who shall be summoned, and shall serve at any the said Assizes, General Gaol Delivery, or Sessions aforesaid, shall and may, at the End of every such Assize and General Gaol Delivery, or Sessions aforesaid, repair to the Sheriff, or under Sheriff of the said County for the Time being, to have his and their Names entred in the said Book or Register kept for the Purpose aforesaid, of which he shall have a Certificate upon his immediate Request *gratis*, from the Sheriff, or Under Sheriff for the Time being, testifying such his Attendance and Service done.

Sheriff of York to register the Names of all who serve on Juries in a Book alphabetically.

By 3 and 4 Ann. c. 18. sec. 3. Sheriff not keeping a Register forfeits 100l.

'VIII. And whereas two several Panels of Jurors have been 'usually returned to serve on the Grand Inquest; and that 'many more Panels have been sometimes returned for Trials in 'Civil Causes, at the Assizes held for the said County of *York*; 'which was found to be more than necessary, and burthensome 'to the Persons there qualified for the said Service;' Be it further enacted by the Authority aforesaid, That from henceforth any one Panel consisting of forty-eight Freeholders and Copyholders, and no more (each Person having fourscore Pounds Land *per Annum*) shall be returned to serve on the Grand Inquest, and no more than ten Panels, consisting of twenty-four Jurors in each Panel, shall be returned to serve upon Trials in Civil Causes, at any Assizes to be holden for the said County of *York* (except only where special Juries are directed to be returned by Rule of Court) and that at no one Quarter-Sessions

One Panel of 48 Freeholders, &c. Ten Panels of 24 Jurors, &c.

Not above 40 Persons to be returned on the

of the Peace, to be holden for the said County, or within any of the Ridings within the same, or in any Place where such Sessions of the Peace shall be holden by Adjournment, or otherwise, within the same County, shall be returned above the Number of forty Persons, to serve either upon the Grand Inquest, or other Service there; any Law or Usage to the contrary notwithstanding.

No. 55. 7 and 8 William III. c. 32. Grand Inquest for the County of York.

'IX. And whereas the Inhabitants of the City and Liberty 'of *Westminster* serve in all Juries in the Courts of *King's Bench*, '*Common Pleas*, and *Exchequer*, and likewise at the Sessions of 'the Peace which (by virtue of his Majesty's Commission) is 'quarterly held for the said City and Liberty;' Be it further enacted by the Authority aforesaid, That from henceforth the said Inhabitants of the City and Liberty of *Westminster* shall be, and are hereby exempted from serving in any Jury at the Sessions before the Justices of the Peace for the County of *Middlesex*.

Inhabitants of Westminster exempted from serving on Juries for the County of Middlesex.

'X. And whereas by an Act made in the fourth and fifth 'Years of the Reign of King *William* and Queen *Mary*, 'intituled, "An Act for reviving, continuing, and explaining 'several Laws therein mentioned, which are expired, and 'near expiring," amongst other Things, there were several 'good Clauses and Provisions made and enacted, for returning 'able and sufficient Jurors for Trials of Issues joined in any of 'the Courts of *King's Bench*, *Common Pleas*, or *Exchequer*, or 'before Justices of Assize, or *Nisi Prius*, *Oyer* and *Terminer*, 'Gaol Delivery, or General Quarter-Sessions of the Peace; 'which Act as to so much thereof as did relate to the returning 'of Jurors, was to be in Force for the Space of three Years, 'from the first Day of *May* one thousand six hundred ninety-'three, and from thence to the End of the next Session of 'Parliament, which by Experience hath been found beneficial 'and useful;' Be it enacted by the Authority aforesaid, That the said Act, as to so much thereof as doth relate to the returning of Jurors, shall be and is hereby continued, and shall be in Force, together with this Act, for the Space of seven Years, from the first Day of *May* one thousand six hundred ninety-six, and from thence to the End of the next Session of Parliament, and no longer.

4 & 5 W. & M. c. 24.

Made perpetual by 3 Geo. 2. c. 25. and 6 Geo. 2. c. 37.

as to the returning able Jurors, continued for 7 Years.

'XI. Provided always and be it enacted by the Authority aforesaid, That this Act, or the said Act, or any Thing therein contained, shall not extend to give or require any longer Time for the summoning of any Juries that are to try any Issues joined in any of the said Courts, that are triable by Jurors of the City of *London*, or County of *Middlesex*, than was by Law required before the making of the said Act; nor shall extend or be construed to give any longer Time, or other Day, for the Return of any Writ, Precept, or Process of *Venire facias*, *Habeas Corpora*, or *Distringas*, for the summoning, attaching, or distraining of any Jury to appear, than was by Law required before the making of the said Act; but that where there shall not be six Days between the awarding of such Writ, Precept, or Process,

Neither of the Acts to give longer Time for summoning Juries, than by Law required, nor for Return of Writs, &c.

No. 55. 7 and 8 William III. c. 32.

and Return thereof, every Juror may be summoned, attached, or distrained to appear, at the Day and Time therein mentioned or appointed, as he might have been before the making of the said Act; any thing herein or therein contained to the contrary in any wise notwithstanding.

Juror to appear at the Time appointed, &c.

This Act not to extend to London, &c.

XII. Provided, That this Act, or any Thing therein contained, shall not extend to the City of *London*, nor to any other County of any City or Town within this Realm, nor to any Town Corporate that have Power by Charter to hold Sessions of Gaol Delivery, or Sessions of the Peace for such Town.

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## No. 56.

P. 1 Anne, st. 2, c. 13.—An Act for continuing former Acts for exporting Leather, and for Ease of Jurors, and for reviving and making more effectual an Act relating to Vagrants.

No. 56. 1 Anne, st. 2, c. 13.

'III. AND whereas divers Persons within the County of *York*, liable to serve on Juries at Assizes and 'Sessions of the Peace (having very considerable Estates in 'Freehold and Copyhold) do for their own Ease prevail with 'the Sheriffs to be returned and summoned to the Service 'of the Sessions, being nigh their Habitations, and the 'Attendance there short, which often necessitates Men of 'meaner Estates to be on Juries at the Assizes, than otherwise 'might and ought to be, where the considerablest Men of 'Estates, liable to the said Service, ought in their legal 'Course to be returned, summoned, and to serve:' For Remedy whereof, Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in Parliament assembled, That no Person interested in such Estate as will qualify him to serve on Juries, of the clear yearly Value of one hundred and fifty Pounds, or of any greater yearly Value, shall be returned and summoned to serve upon any Jury, at any Sessions of the Peace holden for any Part of the County of *York*, upon the Penalty of twenty Pounds, to be forfeited by any Sheriff, Under Sheriff, or other Officer whatsoever, making such Return and Summons as aforesaid, to be recovered to and for the Use of any Person that will sue for the same in any of the Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint, Information, or otherwise, wherein no Essoin, Protection, Privilege, or Wager of Law, or more than one Imparlance shall be allowed.

Persons in the County of York having an Estate of 150l. per Ann. &c., shall not be returned on Juries at the Sessions, &c.

No. 57.

3 and 4 Anne, c. 18.—An Act for making perpetual an Act for the more easy Recovery of small Tithes; and also an Act for the more easy obtaining Partition of Lands in Coparcenary, Joint Tenancy, and Tenancy in Common; and also for making more effectual and amending several Acts relating to the Return of Jurors. P.

'III. AND whereas in an Act made in the Session of Parliament held in the fourth and fifth Years of the late King *William* and Queen *Mary*, intituled, "An Act for reviving, continuing, and explaining several Laws therein mentioned, which are expired and near expiring," there are several good Clauses and Provisions relating to the returning of Jurors, which Clauses and Provisions were by the said Act to continue in Force for seven Years after the first of *May* one thousand six hundred ninety-three, and to the End of the next Session of Parliament: And whereas the said Clauses and Provisions relating to the returning of Jurors were, by an Act made in the seventh and eighth Years of the late King *William* the Third, intituled, "An Act for the Ease of Jurors, and better regulating of Juries," continued for seven Years, from the first of *May* one thousand six hundred ninety and six, and from thence to the End of the next Session of Parliament, and no longer; which said last mentioned Act was also to continue but for the said Term of seven Years, from the first of *May* one thousand six hundred ninety and six, and to the End of the next Session of Parliament: And whereas the said Act made in the said Session of Parliament held in the seventh and eighth Years of the late King *William* the Third, was by an Act made in the first Year of the Reign of her present Majesty, intituled, "An Act for continuing former Acts for exporting Leather, and for Ease of Jurors, and for reviving and making more effectual an Act relating to Vagrants," continued for seven Years from the Expiration thereof, and to the End of the next Session of Parliament: And whereas the said Clauses, Provisions, and Act have not proved effectual, by reason of some Defects in the said Act;' For Remedy whereof be it enacted by the Authority aforesaid, That if any Sheriff of the said County of *York* shall, after the first Day of *May* one thousand seven hundred and five, during the Continuance of the said Act, refuse or neglect to provide and keep such Book, or Register, as in the said recited Act is directed; or shall refuse or neglect to enter therein the Names of the Persons who served as Jurors in any the Assizes or General Quarter-Sessions of the Peace, to be held in or for the said County, or any the Ridings therein, in or during the Time he shall be Sheriff of the said County, with the Additions and Places of Abode, and Time and Places of such their Services,

No. 57. 3 and 4 Anne, c. 18

4 and 5 William & Mary, c. 24.

7 & 8 W. 3. c. 32.

1 Annæ, stat. 2. c. 13.

Penalty on Sheriff of York not keeping a Register Book of Jurors Names.

No. 57. 3 and 4 Anne, c. 18.

in such manner as in and by the said recited Act is directed; or shall refuse or neglect, within ten Days after the next succeeding Sheriff of the said County shall be sworn into his Office, to deliver over to such succeeding Sheriff, as well all and every the Books and Registers that shall be made or prepared in the Year wherein he shall have served Sheriff, as also all such other Books or Registers as were prepared in the Sheriffwick of any of his Predecessors, Sheriffs of the said County, within four Years then next before, and which were delivered over to him by any of his said Predecessors; or shall refuse or neglect to make and deliver, by himself or his Under-Sheriff, such Certificate *gratis*, as in the said recited Act is mentioned, that then every such Sheriff of the said County of *York*, so refusing or neglecting in all or any the said Cases aforesaid, shall for every such Offence forfeit the Sum of one hundred Pounds, one Moiety whereof shall be to the Use of her Majesty, her Heirs or Successors, and the other Moiety to such Person or Persons as shall sue for the same, in any of her Majesty's Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information, wherein no Essoin, Protection, or Wager of Law, nor more than one Imparlance shall be allowed.

Or returning one Person oftener than once in four Years.

IV. And be it further enacted by the Authority aforesaid, That if any such Sheriff of the said County, for the Time being, his or their Under-Sheriff, Deputy, or Bailiff, during the Continuance of the said Act, shall knowingly summon or return any Person or Persons to serve on any Jury or Juries, at any the said Assizes or Sessions of the Peace, who shall within four Years before such Summons or Return, have served on any Jury at any the said Assizes or Sessions held within the said County, or any the Ridings therein, and shall not, upon producing of such Certificate or Certificates, as aforesaid, to the Officer or Person so summoning, or to the said Sheriff, or his Under-Sheriff or Deputy, discharge the said Summons or Return, and thereof give Notice to the Party summoned, six Days before such Assizes or Sessions of the Peace, at the which such Person shall be summoned or returned to appear, that then the said Sheriff, Under-Sheriff, Bailiff, or Person so summoning or refusing to discharge, as aforesaid, shall forfeit and lose to the Party so summoned the Sum of twenty Pounds, to be recovered in Manner and Form as is last herein before-mentioned, together with his full Costs of Suit.

'V. And whereas many Constables, Tythingmen, and 'Headboroughs of Towns, have refused or neglected to 'return, or give to the Justices of the Peace at the General 'Quarter-Sessions, a true List in Writing of the Names and 'Places of Abode of all Persons within the respective Places 'for which they serve, qualified to serve upon Juries, as in 'and by the said Act made in the seventh and eighth Years of 'the late King *William* it is enacted and provided; by reason 'of which Neglect, the good Intent of the said Act has been 'eluded, and great Inconveniences have thereupon ensued;'

For Remedy whereof be it further enacted by the Authority aforesaid, That the Justices of the Peace for all Counties or Ridings, within the Kingdom of *England*, or Dominion of *Wales*, shall yearly and every Year, during the Continuance of the said Act, at the General Quarter-Sessions to be holden next after the four and twentieth Day of *June*, issue forth their Warrant or Warrants, under the Hands and Seals of two or more of them, to the Head or Chief Constable and Constables of every Hundred, Lathe, or Wapentake, requiring him or them to issue forth his or their Precept or Precepts to the respective Constables, Tythingmen, and Headboroughs within his and their Hundred, Lathe, or Wapentake, thereby directing and requiring them, and all and every of them, to convene and meet together with the said Head Constables of the Hundred, Lathe, or Wapentake, within fourteen Days next after the Date of such Receipt, at some usual or convenient Place in the Hundred, Lathe, or Wapentake, when and where the Constables, Tythingmen, and Headboroughs, shall prepare and make a true List fair written and signed by them, of the Names and Places of Abode of all the Persons within the respective Places for which they serve, qualified to serve on Juries, according to the Direction of the said Act made in the fourth and fifth Years of King *William* and Queen *Mary*, with their Titles and Additions, between the Age of one and twenty Years and the Age of seventy Years, as by the said Act of the seventh and eighth Years of the said King *William* is directed and appointed: Which List the said Constable, Tythingman, and Headborough or their Deputies, or some or one of them yearly, at the General Quarter-Sessions of the Peace to be holden for each County, Riding, or Division, or any Part thereof, in the Week after the Feast of Saint *Michael*, upon the first Day of the said Sessions, or upon the first Day that the said Sessions shall be held by Adjournment at any other particular Place or Division, shall return and give to the Justices of the Peace in open Court: And any Head Constable of the Hundred, Lathe, or Wapentake, failing to issue forth his or their Precept or Precepts to convene and meet together, with the Constables, Tythingmen, and Headboroughs, as aforesaid, shall forfeit and incur the Penalty of ten Pounds; and any Constable, Tythingman, and Headborough, failing to meet the Head Constable of the Hundred, Lathe, or Wapentake, pursuant to his Precept, and failing to prepare and make a true List, and to return and give in the same to the Justices in open Court, as aforesaid, shall forfeit and incur the Penalty of five Pounds: And every such High Constable, Constable and Tythingman, so offending, shall be prosecuted at the General Assizes, Sessions of *Oyer* and *Terminer*, and General Gaol Delivery, or Sessions of the Peace, before the Justices thereof, who shall have Power and Authority to hear and determine the same.

No. 57.
3 and 4 Anne, c. 18.
Penalty on Constables not returning a List of Persons fit for Jurors.
'Continued by 9 Geo. I c. 8, s. 2, for seven Years.'
The Constable, &c., subscribing the List before a Justice, is sufficient by 3 Geo. II. c. 25. s. 7.'
'See 10 Annæ, c. 14.'

VI. And for the better Observance of this Act, and of the said Acts made in the fourth and fifth Years of King *William*

The forementioned Acts to be read publicly

No. 57. 3 and 4 Anne, c. 18. every Quarter-Sessions after 24 June, yearly.

and Queen *Mary*, and in the said seventh and eighth Years of the late King *William*, the Justices of the Peace at the General Quarter-Sessions, held after the four and twentieth Day of *June* yearly, shall cause the said several Acts to be publicly read in open Court.

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## No. 58.

P.

4 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice.

No. 58. 4 Anne, c. 16.

'VI. AND whereas great Delays do frequently happen in Trials, by reason of Challenges to the Arrays of 'Panels of Jurors, and to the Polls, for Default of Hundred- 'ors:' For Prevention thereof for the Future, be it enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, every *Venire facias* for the Trial of any Issue, in any Action or Suit in any of her Majesty's Courts of Record at *Westminster*, shall be awarded of the Body of the proper County where such Issue is triable.

Venire facias how to be awarded.

Not to extend to Writs of Appeal of Felony or Murder, &c.

VII. Provided always, and be it enacted by the Authority aforesaid, That nothing in this Act before contained shall extend to any Writ, Declaration, or Suit of Appeal of Felony or Murder, or to any Indictment or Presentment of Treason, Felony, or Murder, or other Matter, or to any Process upon any of them, or to any Writ, Bill, Action, or Information upon any Penal Statute.

Where Jurors are to view Lands, &c. Court may order Special Writs of Distringas or Habeas Corpora.

VIII. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term in any Actions brought in any of her Majesty's Courts of Record at *Westminster*, where it shall appear to the Court in which such Actions are depending, that it will be proper and necessary, that the Jurors who are to try the Issues in any such Actions, should have the View of the Messuages, Lands, or Place in question, in order to their better understanding the Evidence that will be given upon the Trials of such Issues, in every such Case the respective Courts in which such Actions shall be depending, may order special Writs of *Distringas* or *Habeas Corpora* to issue, by which the Sheriff, or such other Officer to whom the said Writs shall be directed, shall be commanded to have six out of the first twelve of the Jurors named in such Writs, or some greater Number of them, at the Place in question, some convenient Time before the Trial, who then and there shall have the Matters in question shewn to them by two Persons in the said Writs named, to be appointed by the Court; and the said Sheriff or other Officer, who is to execute the said Writs shall, by a special Return upon the same, certify that the View hath been had according to the Command of the said Writs.

[See the Act at length, Pt. II. Cl. I. No. 23.]

## No. 59.

10 Anne, c. 14.—An Act for the reviving and continuing several Acts therein mentioned, for the preventing Mischiefs which may happen by Fire; for building and repairing County Gaols; for exempting Apothecaries from serving Parish and Ward Offices, and serving upon Juries; and relating to the returning of Jurors. P.

[IV. 4 and 5 W. and M. c. 24, farther continued for seven Years, by 9 Geo. I. c. 8, § 2.—7 and 8 W. III. c. 32.—1 Annæ, st. 2, c. 13.—3 and 4 Annæ, c. 18.—3 Geo. II. c. 25.—6 Geo. II. c. 37.]

'V. AND whereas by the said Act made in the seventh and eighth Years of the said King *William*, it is enacted, That from and after the four and twentieth Day of *June*, one thousand six hundred ninety-six, no Person shall be returned or summoned to serve upon any Jury of the Assizes, or General Gaol Delivery, to be holden for the County of *York*, or at any Sessions of the Peace to be holden for any Part thereof, (the City of *York*, and County of the said City, and Town and County of *Kingston upon Hull*, excepted) above once in four Years, and some Doubt having arisen on what is to be understood by any Sessions of the Peace to be holden for any Part thereof;' therefore for explaining the same Words, and avoiding any Dispute that may hereafter be made touching the Construction thereof; Be it enacted and declared, That the same shall be construed to extend, not only to any Sessions of the Peace to be holden for any of the Ridings within the said County of *York*; but also to any Sessions of the Peace that shall be holden by Adjournment for any Part of the said Ridings, or any of them.

No. 59. 10 Anne, c. 14. 7 & 8 W. 3. c. 32. § 7. explained.

VI. Provided nevertheless, That if any Person interested in such Estate, as will qualify him to serve on Juries, of the clear yearly Value of one hundred and fifty Pounds, or of any greater yearly Value, shall serve as a Juror at any of the said Sessions or Adjournments, he shall not thereby be exempted from serving as a Juror at the Assizes or General Gaol Delivery to be holden for the said County of *York*, for the said Term of four Years, or any other Term; any Thing in the said recited Acts, or any of them, or in this present Act, contained to the contrary thereof in any wise notwithstanding.

Not to extend to exempt any Persons from serving as Jurors at the Assizes for the said County.

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## No. 60.

12 George I. c. 31.—An Act for the better Regulating Trials by *Nisi Prius* in the County of *Middlesex*.

'WHEREAS in and by an Act of Parliament made in the 'Eighteenth Year of the Reign of Queen *Elizabeth*, 'intituled, "An Act for Trial of Nisi Prius in the County of 'Middlesex," Power is respectively given to the Chief Justice 'of the *King's Bench*, the Chief Justice of the *Common Pleas*,

No. 60. 12 George I. c. 31. 18 Eliz. c. 12.

No. 60.
12 George I.
c. 31.

'and the Chief Baron of the Court of *Exchequer* for the Time 'being, and in the Absence or Default of any of them, to 'two other Judges or Barons of the same several Courts, where 'it shall happen either of the same Chief Justices, or Chief 'Baron for the Time being, to be absent, to try Issues as 'Justices of *Nisi Prius* for the said County of *Middlesex* 'within the Term-Time, or within four Days next after the 'End of any Term; and whereas the restraining the Time 'for such Trials, after the Term, to four Days, hath frequently 'occasioned Delay of Justice, and the requiring the Presence 'of two Judges or Barons, in the Absence of any of them the 'said Chief Justices or Chief Baron, is found by Experience 'to be very inconvenient:' For Remedy thereof, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the Authority of the same, That from and after the first Day of *Easter* Term, in the Year of our Lord one thousand seven hundred and twenty-six, it shall and may be lawful to and for the Chief Justice of the *King's Bench*, the Chief Justice of the *Common Pleas*, and the Chief Baron of the Court of *Exchequer* for the Time being, and every of them respectively, and in the Absence or Default of any of them, to and for any other Judge or Baron of the said several Courts, where it shall happen either of the said Chief Justices, or the Chief Baron for the Time being, to be absent, as Justices of *Nisi Prius* for the said County of *Middlesex*, within the Term or within the Space of eight Days after the End of any Term respectively, to try all such Issues, as by the said Act they or any of them are enabled to try, in such Place and Manner, and with and under such Powers, Authorities and Provisions, as in and by the said recited Act, or any other Act of Parliament or Law whatsoever concerning the Premisses, are prescribed and contained; any Thing in the said recited Act to the contrary hereof in any wise notwithstanding.

The Chief Justices or Chief Baron, and in their Absence, any other Judge or Baron in Term, or within eight Days after, may try Issues at Nisi Prius.

II. And be it further enacted by the Authority aforesaid, That all Sheriffs, Officers, Ministers, Parties, Witnesses, Jurors, and other Persons whatsoever, who by the said recited Act were required to give Attendance upon the said Chief Justices and Chief Baron, or other Judges and Barons, or to make Return of Process, or do or execute any other Matters or Things whatsoever, relating to Trials to be had by Virtue of the said recited Act, shall be charged and obliged respectively to give their Attendance, make Return of Process, and do and execute all other Matters and Things whatsoever relating to any Trials to be had by Virtue of this Act, in the like Manner, and under the like Penalties and Forfeitures, as in or by the said recited Act are expressed or provided, as fully and effectually to all Intents and Purposes, as if the same and every of them had been repeated and inserted in this present Act.

Sheriffs, &c. are to give Attendance, &c. as by 18 Eliz. provided.

## No. 61.

## 3 George II. c. 25.—An Act for the better Regulation of Juries.

'WHEREAS many evil Practices have been used in cor- 'rupting of Jurors returned for the Trial of Issues 'joined to be tried before the Justices of Assize or *Nisi* '*prius*, and the Judges of the Great Sessions in *Wales*, and the 'Judge or Judges of the Sessions for the Counties Palatine of '*Lancaster*, *Chester*, or *Durham*, and many Neglects and 'Abuses have happened in making up the Lists of Freehold- 'ers, who ought to serve on such Trials, and many Persons 'being lawfully summoned to serve on Juries have neglected 'to appear, to the great Injury of many Persons in their Pro- 'perties and Estates;' In order to prevent the like Practices, Neglects and Abuses, Be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *September* one thousand seven hundred and thirty, the Person or Persons required by a Statute made in the seventh and eighth Years of the Reign of his late Majesty King *William* the Third, intituled, "An Act for the Ease of Jurors, and better regulating of Juries," and by a Clause in another Act made in the third and fourth Years of the Reign of the late Queen *Anne*, intituled, "An Act for making perpetual an Act for the more easy Recovery of small Tithes; and also an Act for the more easy obtaining Partition of Lands in Coparcenary, joint Tenancy, and Tenancy in Common; and also for making more effectual and amending several Acts relating to the Return of Jurors," to give in, or who are by virtue of this Act to make up, true Lists in Writing of the Names of Persons qualified to serve on Juries, in order to assist them to complete such Lists, pursuant to the Intent of the said Act, shall (upon Request by him or them made to any Parish Officer or Officers who shall have in his or their Custody any of the Rates for the Poor or Land Tax in such Parish or Place) have free Liberty to inspect such Rates, and take from thence the Name or Names of such Freeholders, Copyholders, or other Persons qualified to serve on Juries, dwelling within their respective Parishes or Precincts for which such List is to be given in and returned pursuant to the said Acts; and shall yearly and every Year, twenty Days at least before the Feast of Saint *Michael* the Archangel, upon two or more *Sundays* fix upon the Door of the Church, Chapel, and every other publick Place of religious Worship within their respective Precincts, a true and exact List of all such Persons intended to be returned to the Quarter Sessions of the Peace, as qualified to serve on Juries, pursuant to the Directions of the said Act, and leave at the same Time a Duplicate of such List with a Churchwarden, Chapelwarden, or Overseer of the Poor of the said

No. 61. 3 George II. c. 25.

List of Jurors qualified according to the Act 7 & 8 W. 3. c. 32. and 3 & 4 Ann. c. 18.

to be made from the Rates in each Parish,

and yearly fixed upon Church Doors.

No. 61.
3 George II. c. 25.

Parish or Place, to be perused by the Parishioners without Fee or Reward, to the End that Notice may be given of Persons so qualified who are omitted, or of Persons inserted by Mistake who ought to be omitted out of such Lists; and if any Person or Persons, not being qualified to serve on Juries, shall find his or their Name or Names mentioned in such List, and the Person or Persons required to make such List, shall refuse to omit him or them, or think it doubtful whether he or they ought to be omitted, it shall and may be lawful to and for the Justices of the Peace for the County, Riding, or Division at their respective General Quarter Sessions, to which the said Lists shall be so returned, upon Satisfaction from the Oath of the Party complaining, or other Proof, that he is not qualified to serve on Juries, to order his or their Name or Names to be struck out or omitted in such List, when the same shall be entred in the Book to be kept by the Clerk of the Peace for that Purpose, pursuant to the said Act.

Persons not qualified may be relieved at the Quarter-Sessions.

II. And be it further enacted, That if any Person or Persons required by the said Acts to return or give in, or by virtue of this Act to make up any such List, or concerned therein, shall wilfully omit out of any such List any Person or Persons whose Name or Names ought to be inserted, or shall wilfully insert any Person or Persons who ought to be omitted, or shall take any Money or other Reward for omitting or inserting any Person whatsoever, he or they so offending shall, for every Person so omitted or inserted in such List, contrary to the Meaning of this Act, forfeit the Sum of twenty Shillings for every such Offence, upon Conviction before one or more Justice or Justices of the Peace of the County, Riding or Division where such Offender shall dwell, upon the Confession of the Offender, or Proof by one or more credible Witness or Witnesses on Oath; one Half thereof to be paid to the Informer, and the other Half to the Poor of such Parish or Place for which the said List is returned; and in case such Penalty shall not be paid within five Days after such Conviction, the same shall be levied by Distress and Sale of the Offender's Goods by Warrant or Warrants from one or more Justice or Justices of the Peace, returning the Overplus, if any there be; and the said Justice or Justices, before whom such Person shall be convicted of such Offence, shall, in Writing under their Hands, certify the same to the Justices at their next General Quarter Sessions which shall be held for the County in which the Person or Persons so omitted or inserted shall dwell, which Justices shall direct the Clerk of the Peace for the Time being to insert or strike out the Name or Names of such Person or Persons as shall by such Certificate appear to have been omitted or inserted in such Lists, contrary to the Meaning of this Act; and Duplicates of the said Lists, when delivered in at the Quarter-Sessions of the Peace, and entred in such Book to be kept by the Clerk of the Peace for that Purpose, shall, during the Continuance of such Quarter-Sessions, or within ten Days after, be delivered or transmitted by the Clerk of the Peace to

Wilfully omitting or inserting wrong Persons, forfeits 20s.

Duplicates of the Lists to be transmitted to the Sheriff.

the Sheriff of each respective County, or his Under-Sheriff, in order for his returning of Juries out of the said Lists; and such Sheriff or Under Sheriff shall immediately take care, that the Names of the Persons contained in such Duplicates shall be faithfully entred alphabetically, with their Additions and Places of Abode in some Book or Books to be kept by him or them for that Purpose; and that every Clerk of the Peace neglecting his Duty therein shall forfeit the Sum of twenty Pounds to such Person or Persons as shall inform or prosecute for the same, until the Party be thereof convicted upon an Indictment before the Justices of the Peace at any General Quarter Sessions of the Peace to be holden for the same County, Riding, Division or Precinct.

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Penalty on Sheriff, &c. returning any Person whose Name is not in the Duplicate.

III. And be it further enacted, That in case any Sheriff, Under-Sheriff, Bailiff or other Officer to whom the Return of Juries shall belong, shall summon and return any Person or Persons to serve on any Jury in any Cause to be tried before the Justices of Assize or *Nisi prius*, or Judges of the said Great Sessions, or the Judge or Judges of the Sessions for the said Counties Palatine, whose Name is not inserted in the Duplicates so delivered or transmitted to him or them by such Clerk of the Peace, if any such Duplicate shall be delivered or transmitted, or if any Clerk of Assize, Judge's Associate or other Officer shall record the Appearance of any Person so summoned and returned as aforesaid, who did not really and truly appear, then and in such Case any Judge or Justice of Assize or *Nisi prius*, or Judge or Judges of the said Great Sessions, or the Judge or Judges of the Sessions for the said Counties Palatine, shall and may, upon Examination in a summary Way, set such Fine or Fines upon such Sheriff or Under Sheriff, Clerk of the Assize, Judge's Associate or other Officer, for every such Person so summoned and returned as aforesaid, and for every Person whose Appearance shall be so falsly recorded, as the said Judge or Justice of Assize, *Nisi prius*, or of the said Great Sessions, or the Judge or Judges of the Sessions for the said Counties Palatine shall think meet, not exceeding ten Pounds, and not less than forty Shillings.

Clerk of Assize recording Appearances when the Party did not appear, to be fined.

Justices of Assize &c. may fine Sheriff, &c. for returning Jurors irregularly.

IV. And for preventing Abuses by Sheriffs, Under Sheriffs, Bailiffs or other Officers concerned in the summoning or returning of Jurors: Be it enacted by the Authority aforesaid, That no Person shall be returned as Jurors to serve on Trials at any Assizes or *Nisi prius*, or at the said Great Sessions, or at the Sessions for the said Counties Palatine, who have served within the Space of one Year before in the County of *Rutland*, or four Years in the County of *York*, or of two Years before in any other County, not being a County of a City or Town; and if any such Sheriff shall wilfully transgress therein, any Judge or Justice of Assize or *Nisi prius*, or of the said Great Sessions, or the Judge or Judges of the Sessions for the said Counties Palatine, may and is hereby required on Examination and Proof of such Offence, in a summary Way, to set a Fine or Fines upon every

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such Offender as he shall think meet, not exceeding five Pounds for any one Offence.

Sheriff, &c., to enter the Names of those who have served:

V. And be it further enacted, That the Sheriff, Under Sheriff, or other Officer to whom the Return of Juries shall belong, shall from Time to Time enter or register in a Book to be kept for that Purpose the Names of such Persons as shall be summoned, and shall serve as Jurors on Trials at any Assizes or *Nisi prius*, or in the said Courts of Great Sessions, or Sessions for the said Counties Palatine, together with their Additions and Places of Abode alphabetically, and also the Times of their Services; and every Person so summoned and attending or serving as aforesaid, shall (upon Application by him made to such Sheriff, Under Sheriff, or other Officer) have a Certificate testifying such his Attendance or Service done, which Certificate the said Sheriff, Under Sheriff or other Officer is hereby directed and required to give without Fee or Reward; and the said Book shall be transmitted by such Sheriff, Under Sheriff or other Officer, to his or their Successor or Successors, from Time to Time.

And give Certificates.

No Money to be taken to excuse Persons from serving.

VI. And be it further enacted, That no Sheriff, Under Sheriff, Bailiff, or other Officer or Person whatsoever, shall directly or indirectly take or receive any Money or other Reward to excuse any Person from serving or being summoned to serve on Juries, or under that Colour or Pretence, and that no Bailiff or other Officer appointed by any Sheriff or Under Sheriff to summon Juries, shall summon any Person to serve thereon other than such whose Name is specified in a Mandate signed by such Sheriff or Under Sheriff, and directed to such Bailiff or other Officer; and if any Sheriff, Under Sheriff, Bailiff or other Officer shall wilfully transgress in any the Cases aforesaid, any Judge or Justice of Assize, *Nisi prius* or Great Sessions aforesaid, or the Judge or Judges of the Sessions for the said Counties Palatine, may and is hereby required, on Examination and Proof of such Offence, in a summary Way, to set a Fine or Fines upon any Person or Persons so offending as he shall think meet, not exceeding ten Pounds, according to the Nature of the Offence.

Penalty.

'VII. And whereas by the said Act of the seventh 'and eighth Years of the Reign of his late Majesty King '*William* the Third, and also by another Act made in the 'third and fourth Years of the Reign of her late Majesty 'Queen *Anne*, all Constables, Tythingmen and Headboroughs 'are obliged to give in true Lists at the respective General 'Quarter Sessions of the Peace holden for each County, Rid-'ing or Division, of the Names and Places of all Persons 'within their respective Precincts or Places qualified to serve 'on Juries, to the Justices of the Peace in open Court, which 'hath by Experience been found inconvenient and expensive 'to several Constables, Tythingmen and Headboroughs, such 'Quarter-Sessions being often held at a great Distance from 'their Abode:' For Remedy whereof, be it enacted by the Authority aforesaid, That from and after the said first Day of

*September* one thousand seven hundred and thirty, it shall be lawful and sufficient for all or any Constables, Tythingmen or Headboroughs, after they shall have made and completed such Lists of Persons qualified to serve on Juries for their respective Parishes or Precincts, according to the Manner directed by the before-mentioned Acts and this present Act; to subscribe the same in the Presence of one or more Justice or Justices of the Peace for each respective County or Place, and also at the same Time to attest the Truth of such Lists upon Oath to the best of their Knowledge or Belief, which Oath such Justice or Justices respectively are hereby empowered and required to administer; and the said Lists shall (being first signed by the said Justices respectively, before whom the same shall be attested on Oath, and subscribed as aforesaid) be delivered by the said Constables, Tythingmen or Headboroughs to the Chief or High Constables of the Hundreds or Divisions whereunto the same shall respectively belong, who are hereby directed and required to deliver in such Lists to the Justices of the Peace for the County, Riding or Division, at their respective General Quarter Sessions in open Court, attesting at the same Time upon Oath their Receipt of such Lists from the Constables, Tythingmen or Headboroughs respectively, and that no Alteration hath been therein made since their Receipt thereof; and the said Lists, so delivered in and attested, shall be deemed as effectual as if they had been delivered in by the Constables, Tythingmen or Headboroughs for their respective Parishes or Precincts.

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Constables, &c. to subscribe their Lists before Justices, on Oath, &c.

VIII. And be it further enacted by the Authority aforesaid, That from and after the twenty-fifth Day of *December* one thousand seven hundred and thirty, every Sheriff or other Officer to whom the Return of the *Venire facias juratores*, or other Process for the Trial of Causes before Justices of Assize or *Nisi prius* in any County in *England*, doth or shall belong, shall, upon his Return of every such Writ of *Venire facias*, (unless in Causes intended to be tried at Bar, or in Cases where a special Jury shall be struck by Order or Rule of Court) annex a Panel to the said Writ, containing the Christian and Surnames, Additions and Places of Abode of a competent Number of Jurors named in such Lists as qualified to serve on Juries, the Names of the same Persons to be inserted in the Panel annexed to every *Venire facias*, for the Trial of all Issues at the same Assizes in each respective County; which Number of Jurors shall be not less than forty-eight in any County, nor more than seventy-two, without Direction of the Judges appointed to go the Circuit, and sit as Judges of Assize or *Nisi prius* in such County, or one of them, who are hereby respectively empowered and required, if he or they see Cause, by Order under his or their respective Hand or Hands, to direct a greater or lesser Number, and then such Number as shall be so directed shall be the Number to serve on such Jury; and that the Writs of *Habeas corpora juratorum*, or *Distringas*, subsequent to such Writ of *Venire facias juratores*, need not have

Sheriff, &c. on Return of Writs of Venire facias to annex a Panel of Jurors, &c.

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inserted in the Bodies of such respective Writs the Names of all the Persons contained in such Panel, but it shall be sufficient to insert in the mandatory Part of such Writs respectively, *Corpora separalium personarum in panello huic brevi annexo nominatarum*, or Words of the like Import, and to annex to such Writs respectively Panels containing the same Names as were returned in the Panel to such *Venire facias*, with their Additions and Places of Abode, that the Parties concerned in any such Trials may have timely Notice of the Jurors who are to serve at the next Assizes in order to make their Challenges to them, if there be Cause; and that for the making the Returns and Panels aforesaid, and annexing the same to the respective Writs, no other Fee or Fees shall be taken than what are now allowed by Law to be taken for the Return of the like Writs and Panels annexed to the same; and that the Persons named in such Panels shall be summoned to serve on Juries at the then next Assizes or Sessions of *Nisi prius* for the respective Counties to be named in such Writs, and no other.

Return of Jurors in Wales;

IX. And be it further enacted, That every Sheriff or other Officer to whom the Return of Juries for the Trial of Causes in the Court of Grand Sessions in any County of *Wales* do or shall belong, shall, at least eight Days before every Grand Sessions, summon a competent Number of Persons qualified to serve on Juries, out of every Hundred and Commote within every such County, so as such Number be not less than ten, or more than fifteen, without the Directions of the Judge or Judges of the Grand Sessions held for such County, who is and are hereby empowered, if he or they shall see Cause, by Rule or Order of Court, to direct a greater or lesser Number to be summoned out of every such Hundred and Commote respectively; and that the said Officer and Officers who shall summon such Person, shall return a List containing the Christian and Surnames, Additions and Places of Abode of the Persons so summoned to serve on Juries, the first Court of the second Day of every Grand Sessions; and that the Persons so summoned, or a competent Number of them, as the Judge or Judges of such Grand Sessions shall direct, and no other, shall be named in every Panel to be annexed to every Writ of *Venire facias juratores*, *Habeas corpora juratorum*, and *Distringas*, that shall be issued out and returnable for the Trial of Causes in such Grand Sessions.

and Counties Palatine of Chester, Lancaster and Durham.

X. And be it further enacted by the Authority aforesaid, That every Sheriff or other Officer to whom the Return of the *Venire facias juratores*, or other Process for the Trial of Causes before the Justices of the Courts or Sessions to be held for the Counties Palatine of *Chester*, *Lancaster*, or *Durham* doth belong, shall, fourteen Days at the least before the said Courts or Sessions shall respectively be held, summon a competent Number of Persons qualified to serve on Juries, so as such Number be not less than forty-eight, nor more than seventy-two, without the Direction of the Judge or Judges of the Courts or Ses-

sions to be held for such Counties Palatine respectively, and shall, eight Days at the least before such Courts or Sessions shall respectively be held, make or cause a List to be made of the Persons so summoned to serve on Juries, containing their Christian and Surnames, Additions and Places of Abode; and the List so made shall forthwith be publickly hung up in the Sheriff's Office, to be inspected and read by any Person or Persons whatsoever; and that the Persons named in such List, and no other, shall be summoned to serve on Juries at the next Courts or Sessions to be held for the said respective Counties Palatine; and the said Sheriff or other Officer is hereby required to return such List on the first Day of the Court or Sessions to be held for the said Counties Palatine respectively; and the Persons so summoned, or a competent Number of them, as the Judge or Judges of such Courts or Sessions respectively shall direct, and no other, shall be named in every Panel to be annexed to every Writ of *Venire facias juratores, Habeas corpora juratorum,* and *Distringas,* that shall be issued out and returnable for the Trial of Causes in such Courts or Sessions respectively.

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XI. And be it further enacted by the Authority aforesaid, That the Name of each and every Person who shall be summoned and impanelled as aforesaid, with his Addition, and the Place of his Abode, shall be written in several and distinct Pieces of Parchment or Paper, being all, as near as may be, of equal Size and Bigness, and shall be delivered unto the Marshal of such Judge of Assize or *Nisi prius,* or of the said Great Sessions, or of the Sessions for the said Counties Palatine, who is to try the Causes in the said County, by the Under Sheriff of the said County, or some Agent of his; and shall by Direction and Care of such Marshal be rolled up all as near as may be, in the same Manner, and put together in a Box or Glass to be provided for that Purpose; and when any Cause shall be brought on to be tried, some indifferent Person, by Direction of the Court, may and shall in open Court draw out twelve of the said Parchments or Papers, one after another; and if any of the Persons whose Names shall be so drawn, shall not appear, or be challenged and set aside, then such further Number, until twelve Persons be drawn who shall appear, and after all Causes of Challenge shall be allowed as fair and indifferent; and the said twelve Persons so first drawn and appearing, and approved as indifferent, their Names being marked in the Panel, and they being sworn, shall be the Jury to try the said Cause; and the Names of the Persons so drawn and sworn shall be kept apart by themselves in some other Box or Glass to be kept for that Purpose, till such Jury shall have given in their Verdict, and the same is recorded, or until the Jury shall, by Consent of the Parties or leave of the Court, be discharged; and then the same Names shall be rolled up again and returned to the former Box or Glass, there to be kept with the other Names remaining at that Time undrawn, and so *toties quoties,* as long as any Cause remains then to be tried.

Names of Persons impanelled to be written, and delivered to the Marshal of the Assize, and put in a Box to be drawn, &c.

No. 61. 3 George II. c. 25.

Where the Jury have not brought in their Verdict, twelve others to be drawn.

XII. Provided always, That if any Cause shall be brought on to be tried in any of the said Courts respectively, before the Jury in any other Cause shall have brought in their Verdict, or be discharged, it shall and may be lawful for the Court to order twelve of the Residue of the said Parchments or Papers, not containing the Names of any of the Jurors who shall not have so brought in their Verdict, or be discharged, to be drawn in such Manner as is aforesaid, for the Trial of the Cause which shall be so brought on to be tried.

Penalty on Defaulters.

XIII. And be it further enacted, That every Person or Persons, whose Name or Names shall be so drawn as aforesaid, and who shall not appear after being openly called three Times, upon Oath made by some credible Person, that such Person so making Default had been lawfully summoned, shall forfeit and pay for every Default in not appearing upon Call as aforesaid (unless some reasonable Cause of his Absence be proved by Oath or Affidavit, to the Satisfaction of the Judge, who sits to try the said Cause) such Fine or Fines not exceeding the Sum of five Pounds, and not less than forty Shillings, as the said Judge shall think reasonable to inflict or assess for such Default.

Method in case of View.

XIV. Provided always, That where a View shall be allowed in any Cause, that in such Case six of the Jurors named in such Panel, or more, who shall be mutually consented to by the Parties or their Agents on both Sides, or, if they cannot agree, shall be named by the proper Officer of the respective Courts of King's Bench, Common Pleas, Exchequer at *Westminster*, or the Grand Session in *Wales*, and the said Counties Palatine, for the Causes in their respective Courts, or, if need be, by a Judge of the respective Courts where the Cause is depending, or by the Judge or Judges, before whom the Cause shall be brought on to Trial respectively, shall have the View, and shall be first sworn, or such of them as appear, upon the Jury to try the said Cause, before any Drawing as aforesaid, and so many only shall be drawn to be added to the Viewers who appear, as shall, after all Defaulters and Challenges allowed, make up the Number of twelve to be sworn for the Trial of such Cause.

'XV. And whereas some Doubt hath been conceived 'touching the Power of his Majesty's Courts of Law at '*Westminster*, to appoint Juries to be struck before the Clerk of 'the Crown, Master of the Office, Prothonotaries, or other 'proper Officer of such respective Courts, for the Trial 'of Issues depending in the said Courts, without the Consent 'of the Prosecutor, or Parties concerned in the Prosecution or 'Suit then depending, unless such Issues are to be tried at the 'Bar of the same Courts:' Be it declared and enacted by the Authority aforesaid, That it shall and may be lawful to and for his Majesty's Courts of King's Bench, Common Pleas, and Exchequer at *Westminster* respectively, upon Motion made on Behalf of his Majesty, his Heirs or Successors, or on the Motion of any Prosecutor or Defendant in any Indictment

In Trials of Issues at Westminster, on Motion of Parties, Judges may order a special Jury.

or Information for any Misdemeanor, or Information in the Nature of a *Quo Warranto*, depending or to be brought or prosecuted in the said Court of King's Bench, or in any Information depending or to be brought or prosecuted in the said Court of Exchequer, or on the Motion of any Plaintiff or Plaintiffs, Defendant or Defendants in any Action, Cause or Suit whatsoever, depending or to be brought and carried on in the said Courts of King's Bench, Common Pleas, and Exchequer, or in any of them, and the said Courts are hereby respectively authorized and required, upon Motion as aforesaid, in any of the Cases berore-mentioned, to order and appoint a Jury to be struck before the proper Officer of each respective Court, for the Trial of any Issue joined in any of the said Cases, and triable by a Jury of twelve Men, in such Manner as special Juries have been, and are usually struck in such Courts respectively, upon Trials at Bar had in the said Courts, which said Jury so struck as aforesaid, (1.) shall be the Jury returned for the Trial of the said Issue. No. 61. 3 George II. c. 25.

XVI. And it is hereby further enacted, That the Person or Party who shall apply for such Jury to be struck as aforesaid, shall bear and pay the Fees for the striking such Jury, and shall not have any Allowance for the same, upon Taxation of Costs. Persons applying for such Jury, to pay the Fees, 24 Geo. 2. c. 18.

XVII. Provided always, and it is hereby further enacted, That where any special Jury shall be ordered by Rule of any of the said Courts to be struck by the proper Officer of such Court, in the Manner aforesaid, in any Cause arising in any City, or County of a City or Town, the Sheriff or Sheriffs, or Under Sheriff of such City, or County of a City or Town, shall be ordered by such Rule to bring, or cause to be brought before the said Officer, the Books or Lists of Persons qualified to serve on Juries within the same, out of which Juries ought to be returned by such Sheriff or Sheriffs, in like Manner as the Freeholders' Book hath been usually ordered to be brought, in order to the striking of Juries for Trials at the Bar, in Causes arising in Counties at large, and in every such Case the Jury shall be taken and struck out of such Books or Lists respectively. Where special Juries in Cities are appointed, the Jury to be taken out of Lists of Persons qualified.

XVIII. And be it enacted by the Authority aforesaid, That any Person or Persons having an Estate in Possession in Land in their own Right, of the yearly Value of twenty Pounds or upwards, over and above the reserved Rent payable thereout, such Lands being held by Lease or Leases for the absolute Term of five hundred Years or more, or for ninety-nine Years or any other Term determinable on one or more Life or Lives, the Names of every such Person or Persons shall and may, and are hereby directed and required to be inserted in the respective Lists as aforesaid, in order to their being inserted in the Freeholders Book; and the Persons appointed to make such Lists are hereby directed to insert them accordingly; and such Who are qualified to be inserted in the Lists.

(1.) If, after a Special Jury has been struck, the Cause goes off for Default of Jurors, no new Jury can be struck; but the Cause must be tried by the Jury first appointed; R. v. Perry, 5 T. R. 453.

No. 61. 3 George II. c. 25.

Leaseholder or Leaseholders shall and may be summoned or impanelled to serve on Juries, in like Manner as Freeholders may be summoned and impanelled by Virtue of this or any other Act or Acts of Parliament for that Purpose, and be subject to the like Penalties for Non-appearance; any Law, Statute, Use or Custom to the contrary notwithstanding.

XIX. And be it further enacted by the Authority aforesaid, That the Sheriffs of the City of *London* for the Time being, shall not impanel or return any Person or Persons to try any Issue joined in any of his Majesty's Courts of King's Bench, Common Pleas, and Exchequer, or to be or serve on any Jury at the Sessions of *Oyer* and *Terminer*, Gaol Delivery or Sessions of the Peace, to be had or held for the said City of *London*, who shall not be an Householder within the said City, and have Lands, Tenements or Personal Estate, to the Value of one hundred Pounds; and the same Matter and Cause alledged by way of Challenge, and so found, shall be taken and admitted as a principal Challenge, and the Person or Persons so challenged, shall and may be examined on Oath of the Truth of the said Matter.

Return of Juries in Capital Cases.

XX. And be it further enacted by the Authority aforesaid, that the Sheriffs or other Officers to whom the returning of Juries doth or shall belong, for any County, City or Place respectively, shall not impanel or return any Person or Persons to serve on any Jury for the Trial of any capital Offence, who at the Time of such Return would not be qualified in such respective County, City or Place, to serve as Jurors in civil Causes for that Purpose; and the same Matter and Cause alledged by Way of Challenge, and so found, shall be admitted and taken as a principal Challenge, and the Person or Persons so challenged, shall and may be examined on Oath of the Truth of the said Matter.

This Act to be read at every Quarter Sessions.

XXI. And be it enacted, That this Act shall be openly read once in every Year at the General Quarter Sessions to be holden for every County, City or Place, within that Part of *Great Baitain* called *England* and *Wales*, next after the twenty-fourth Day of *June*.

Continuation, made perpetual by 6 Geo. 2. c. 37.

XXII. And be it further enacted by the Authority aforesaid, That this Act shall continue and be in Force until the first Day of *September*, one thousand seven hundred and thirty-three, and from thence to the End of the then next Session of Parliament, and no longer.

## No. 62.

**4 George II. c. 7.—An Act to explain and amend an Act made in the third Year of his Majesty's Reign, intituled, "An Act for the better Regulation of Juries," so far as the same relates to the County of *Middlesex*.**

No. 62. 4 George II. c. 7.

'WHEREAS by an Act of Parliament made in the third 'Year of his Majesty's Reign, intituled, "An Act 'for the better Regulation of Juries," it is among other Things 'enacted, That no Persons shall be returned as Jurors to serve 'on Trials at any Assizes or *Nisi Prius*, or at the Great Sessions 'in *Wales*, or at the Sessions for the Counties Palatine of *Lancaster*, *Chester* and *Durham*, who have served within the Space 'of one Year before in the County of *Rutland*, or four Years 'in the County of *York*, or of two Years before in any other 'County, not being a County of a City or Town: And if any 'such Sheriff shall wilfully transgress therein, any Judge or 'Justice of Assize, or *Nisi Prius*, or of the said Great Sessions, or the Judge or Judges of the Sessions for the said 'Counties Palatine, may, and is hereby required, on Examination and Proof of such Offence in a summary Way, to set 'a Fine or Fines upon every such Offender, as he shall think 'meet, not exceeding five Pounds for any one Offence: And 'whereas by reason of the frequent Sessions of *Nisi Prius* in 'the Court of King's Bench, Common Pleas and Exchequer at '*Westminster*, the said Provision cannot be put in Execution in 'the County of *Middlesex*, but is found to be impracticable:' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *May* in the Year of our Lord one thousand seven hundred and thirty-one, the said recited Clause or any Part thereof shall not extend or be construed to extend to the said County of *Middlesex*.

3 Geo. 2. c. 25.

Clauses in the Jury Act not to extend to Middlesex.

II. Provided always, and be it enacted by the Authority aforesaid, That no Person shall be returned to serve as a Juror at any Session of *Nisi Prius*, in the County of *Middlesex*, who has been returned to serve as a Juror, at any such Session of *Nisi Prius* in the said County, in the two Terms or Vacations next immediately preceding, under such Penalty upon the Sheriff, Under Sheriff, Bailiff or other Officer imployed or concerned in the summoning or returning of Jurors in the said County of *Middlesex*, as might have been inflicted upon them or any of them for any Offence against the said recited Clause.

None to be returned, who has been returned in the two Terms preceding.

Made perpetual by 6 G. 2. c. 37.

III. And whereas by the very frequent Occasions there are for Juries in the County of *Middlesex*, and by the small Number of Freeholders that are in the said County, the Sheriffs of the said County may be under Difficulties in procuring Juries to answer the Purposes of this Act; for Remedy whereof be it enacted by the Authority aforesaid, That all Leaseholders

Leaseholders, where the improved Rents amount to 50l. per Annum, liable to serve on Juries.

No. 62. 4 George II. c. 7.

upon Leases where the improved Rents or Value shall amount to fifty Pounds or upwards *per Annum*, over and above all Ground Rents or other Reservations payable by virtue of the said Leases, shall be liable and obliged to serve upon Juries when they shall be legally summoned for that Purpose; any Thing in this or any former Act to the contrary notwithstanding.

## No. 63.

P.*

6 George II. c. 37.—An Act for making perpetual the several Acts therein mentioned, for the better Regulation of Juries; and for empowering the Justices of Session or Assizes for the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, to appoint a Special Jury in Manner therein mentioned; and for * * * * * * * *.

No. 63. 6 George II. c. 37.

'WHEREAS the Laws herein after mentioned, which 'have by Experience been found useful and beneficial, 'are expired or near expiring;' May it therefore please your most Excellent Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That an Act made in the third Year of the Reign of his present Majesty, intituled, "An Act for the better Regulation of Juries," and also one other Act made in the fourth Year of the Reign of his said present Majesty, intituled, "An Act to explain and amend an Act made in the third Year of his Majesty's Reign, intituled, 'An Act for the better Regulation of Juries, so far as the same relates to the County of *Middlesex*,"' which said Acts are temporary and are near expiring, shall be and are hereby made perpetual.

The Acts 3 G. 2. c. 25. & 4 G. 2. c. 7. for regulating Juries, made perpetual.

II. And be it enacted by the Authority aforesaid, That the Justices of the Session or Assizes for the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, upon Motion made on Behalf of his Majesty, his Heirs or Successors, or on Motion of any Prosecutor or Defendant in any Indictment or Information for any Misdemeanor, or on the Motion of any Plaintiff or Plaintiffs, Defendant or Defendants, in any Action, Cause or Suit whatsoever, depending (1.) or to be brought and carried on in the Courts of Session or Assize of the said Counties Palatine of *Chester*, *Lancaster*, and *Durham*, or in any of them, shall and may, in case such Justices in their Discretion shall

In what manner Justices of Sessions or Assize for Chester, Lancaster and Durham, may appoint Special Juries.

(1.) In Cheshire it is the usual Practice for the Judges of the County Palatine, under the Authority of this Act, to direct a Trial by special Jury in Cases coming by Mittimus from the Courts at Westminster. A Question respecting the Regularity of this Practice was incidentally mentioned in Massey *v.* Johnson, 12 East, 69, which was decided upon other Grounds; the Irregularity, if any, being held to be waved. A similar Practice has not been adopted in the other Counties Palatine.

think fit, order and appoint a Jury to be struck before the proper Officer of each Court respectively, for the Trial of any Issue joined in any of the said Cases, in such Manner as Special Juries have been usually struck in the Courts of Law at *Westminster*, upon Trials at Bar had in the said Courts, which Jury so struck as aforesaid, shall be the Jury returned for the Trial of such Issue as aforesaid. No. 63. 6 George II. c. 37.

## No. 64.

24 George II. c. 18. — An Act for the better Regulation of Trials by Jury; and for enlarging the Time for Trials by *Nisi Prius* in the County of *Middlesex*.

'WHEREAS by an Act made in the third Year of the 'Reign of his present Majesty, intituled, "An Act 'for the better Regulation of Juries," it is amongst other 'Things enacted, That the Person or Party who shall apply for 'a Special Jury to be struck in the Manner therein mentioned, 'shall bear and pay the Fees for the striking such Jury, and shall 'not have any Allowance for the same upon Taxation of Costs: 'And whereas the said Clause doth extend only to the Fees 'paid for striking such Special Jury; by reason whereof Spe-'cial Juries have frequently been applied for in small and trivial 'Causes, in order to burden the other Party with the Expence 'thereof; which Practice has been found to be very inconve-'nient and oppressive: And whereas one other Act was made 'in the sixth Year of the Reign of his present Majesty, inti-'tuled, "An Act for making perpetual the several Acts therein 'mentioned, for the better Regulation of Juries; and for 'empowering the Justices of Session or Assizes for the Coun-'ties Palatine of *Chester*, *Lancaster*, and *Durham*, to appoint 'a Special Jury in manner therein mentioned; and for con-'tinuing the Act for regulating the Manufacture of Cloth in the 'West Riding of the County of *York* (except a Clause therein 'contained); and for continuing an Act for the more effectual 'punishing wicked and evil-disposed Persons going armed in 'Disguise, and for other Purposes therein mentioned, and to 'prevent the cutting or breaking down the Bank of any River, 'or any Sea Bank; and to prevent the malicious cutting of 'Hop-binds; and for continuing an Act made in the thirteenth 'and fourteenth Years of the Reign of King *Charles* the Se-'cond, for preventing Theft and Rapine upon the Northern 'Borders of *England*; and for reviving and continuing certain 'Clauses in two other Acts made for the same Purpose;" 'whereby it is amongst other Things enacted, That the said 'Act for the better Regulation of Juries should be, and was 'thereby made perpetual; and it was thereby also enacted, That 'the Justices of the Session or Assizes for the Counties Palatine 'of *Chester*, *Lancaster*, and *Durham*, should and might, upon Mo-'tion, order and appoint a Jury to be struck before the proper 'Officer of each Court respectively, for the Trial of any Issue in

No. 64. 24 George II. c. 18.

3 Geo. 2. c. 25.

6 Geo. 2. c. 37.

No. 64. 24 George II. c. 18.

'any of the Cases, and in such Manner as are therein mentioned;' For Remedy thereof be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *Easter* Term, which shall be in the Year of our Lord one thousand seven hundred and fifty-one, the Person or Party who shall by virtue of either of the said Acts apply for such Special Jury, shall not only bear and pay the Fees for striking such Jury, but shall also pay and discharge all the Expences occasioned by the Trial of the Cause by such Special Jury, and shall not have any further or other Allowance for the same, upon Taxation of Costs, than such Person or Party would be entitled unto in case the Cause had been tried by a Common Jury, unless the Judge before whom the Cause is tried shall, immediately after the Trial, certify in open Court under his Hand upon the Back of the Record, that the same was a Cause proper to be tried by a Special Jury.

Persons applying for Special Juries to pay the Expences of striking the same, and the Charges occasioned by the Trial, &c.

'II. And whereas Complaints are frequently made of the 'great and extravagant Fees paid to Jurymen returned under 'the Authority of the said recited Acts;' Be it enacted by the Authority aforesaid, That no Person who shall, after the said first Day of *Easter* Term, serve upon any Jury appointed or returned by Authority of any of the said Acts, shall be allowed or take for serving on any such Jury more than the Sum of Money which the Judge who tries the Issue or Issues shall think just and reasonable, not exceeding the Sum of one Pound one Shilling, except in Causes wherein a View hath been or shall be directed.

Fees allowed to Jurymen.

'III. And whereas by an Act passed in the fourth Year of 'the Reign of her late Majesty Queen *Anne*, intituled, "An 'Act for the Amendment of the Law, and the better Advancement of Justice," it is enacted, That from and after the first 'Day of *Trinity* Term one thousand seven hundred and six, 'every *Venire facias* for the Trial of any Issue, in any Action 'or Suit in any of her Majesty's Courts of Record at *Westminster*, shall be awarded of the Body of the proper County 'where such Issue is triable; but in the said Act there is contained a Proviso, that the same shall not extend to any Action 'or Information upon any penal Statute; which Proviso has, 'by Experience, been found inconvenient, by reason of Challenges to the Arrays of Panels of Jurors, and to the Polls for 'Default of Hundredors;' Therefore, for Prevention thereof for the future, be it enacted, That from and after the said first Day of *Easter* Term, every *Venire facias* for the Trial of any Issue, in any Action or Information upon any penal Statute, in any of his Majesty's Courts of Record at *Westminster*, in the Counties Palatine of *Lancaster*, *Chester*, and *Durham*, and the Principality of *Wales*, shall be awarded of the Body of the proper County where such Issue is triable; any Thing in the said Act to the contrary notwithstanding.

4 Annæ, c. 16.

Venire facias upon a Penal Statute, to be awarded of the Body of the County.

'IV. And whereas great Delays do frequently happen in 'Trials, where a Peer or Lord of Parliament is Party, by reason of Challenges to the Arrays of Panels of Jurors, for want 'of a Knight's being returned on such Panels;' For Remedy thereof for the future, be it enacted by the Authority aforesaid, That from and after the said first Day of *Easter* Term, no Challenge shall be taken to any Panel of Jurors, for want of a Knight's being returned in such Panel, nor any Array quashed by reason of any such Challenge taken after that Time; any Law, Usage, or Custom to the contrary notwithstanding.

No. 64. 24 George II. c. 18.

No Challenge to be taken to any Panel of Jurors for want of a Knight's being returned, &c.

'V. And whereas by an Act of Parliament made in the 'twelfth Year of the Reign of King *George* the First, intituled, "An Act for the better regulating Trials by *Nisi Prius* 'in the County of *Middlesex*;" Power and Authority is given 'to the Chief Justice of the *King's Bench*, the Chief Justice of 'the *Common Pleas*, and the Chief Baron of the Court of *Exchequer*, for the Time being, and every of them respectively, 'and in the Absence of any of them, to and for any other Judge 'or Baron of the said several Courts, as Justices of *Nisi Prius* for 'the said County of *Middlesex*, within the Term, or within the 'Space of eight Days after the End of any Term respectively, to 'try all such Issues as by an Act of Parliament made in the eighteenth Year of the Reign of Queen *Elizabeth*, intituled, "An 'Act for Trial of *Nisi Prius* in the County of *Middlesex*," they, 'or any of them, are enabled to try, in such Place and Manner, and with and under such Powers, Authorities, and Provisions, as in the said last-mentioned Act, or any other Act 'of Parliament, or Law whatsoever concerning the Premisses, 'are prescribed and contained: And whereas the restraining 'the Time for such Trials after the Term, to eight Days, hath 'been found inconvenient, and occasioned Delay of Justice:' Be it therefore enacted by the Authority aforesaid, That from and after the first Day of *Easter* Term in the Year of our Lord one thousand seven hundred and fifty-one, it shall and may be lawful to and for the Chief Justice of the *King's Bench*, the Chief Justice of the *Common Pleas*, and the Chief Baron of the Court of *Exchequer*, for the Time being, and every of them respectively, and in the Absence of any of them, to and for any other Judge or Baron of the said several Courts, as Justices of *Nisi Prius* for the said County of *Middlesex*, at any Time or Times within the Space of fourteen Days after the End of any Term respectively, to try all such Issues as by the before-mentioned Acts they or any of them are enabled to try, in such Place and Manner, and under such Powers, Authorities, and Provisions as in and by the aforesaid Acts, or any other Act of Parliament or Law whatsoever concerning the Premisses, are prescribed and contained; any thing in the before-mentioned Acts to the contrary hereof in any wise notwithstanding.

12 Geo. 1. c. 31.

18 Eliz. c. 12.

12 Geo. 1. c. 31.

Justice of Nisi Prius for the County of Middlesex, may, within fourteen Days after the End of Term, try Issues.

## No. 65.

29 George II. c. 19.—An Act to empower Judges of Courts of Record in Cities and Towns Corporate, Liberties and Franchises, to set Fines on Persons who shall be summoned to serve upon Juries in such Courts, and shall neglect to attend.

[See post. Title *Inferior Courts.*]

## No. 66.

38 George III. c. 52.—An Act to regulate the Trial of Causes, Indictments, and other Proceedings, which arise within the Counties of certain Cities and Towns Corporate within this Kingdom.—[1st. *June* 1798.]

No. 66. 38 George III. c. 52.

'WHEREAS there at present exists, in the Counties of 'Cities and of Towns Corporate within this King- 'dom, an exclusive Right, that all Causes and Offences 'which arise within their particular Limits should be tried by 'a Jury of Persons residing within the Limits of the County of 'such City or Town Corporate; which ancient Privilege, 'intended for other and good Purposes, has in many Instances 'been found, by Experience, not to conduce to the Ends 'of Justice: And whereas it will tend to the more effectual 'Administration of Justice, in certain Cases, if Actions, 'Indictments, and other Proceedings, the Causes of which 'arise within the Counties of Cities and Towns Corporate, 'were tried in the next adjoining Counties:' In order therefore to remedy this Mischief for the future, be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, in every Action, whether the same be transitory or local, which shall be prosecuted or depending in any of his Majesty's Courts of Record at *Westminster*, and in every Indictment removed into his Majesty's Court of King's Bench by Writ of *Certiorari*, and in every Information filed by his Majesty's Attorney or Solicitor General, or by the Leave of the Court of King's Bench, and in all Cases where any Person or Persons shall plead to or traverse any of the Facts contained in the Return to any Writ of *Mandamus*, if the *Venue* in such Action, Indictment, or Information, be laid in the County of any City or Town Corporate within that Part of *Great Britain* called *England*, or if such Writ of *Mandamus* be directed to any Person or Persons, Body Politic and Corporate, that it shall and may be lawful for the Court in which such Action, Indictment, Information, or other Proceeding

In Actions in any Court of Record at Westminster, &c. if the Venue be laid in the County of any City or Town Corporate in England, &c. the Court may direct the Issue to be tried by a Jury of the County next adjoining.

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shall be depending, at the Prayer and Instance of any Prosecutor or Plaintiff, or of any Defendant, to direct the Issue or Issues joined in such Action, Indictment, Information, or Proceeding, to be tried by a Jury of the County next adjoining to the County of such City or Town Corporate, and to award proper Writs of *Venire* and *Distringas* accordingly, if the said Court shall think it fit and proper so to do.

Bills of Indictment for Offences committed within the County of any [illegible] ... County next adjoining.

II. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for any Prosecutor or Prosecutors to prefer his, her, or their Bill or Bills of Indictment, for any Offence or Offences committed, or charged to be commit- [illegible]

for the Body of such adjoining County, at any Sessions of Oyer and Terminer, or General Gaol Delivery; and that every such Bill of Indictment, found to be a true Bill by such Jury, shall be valid and effectual in Law, as if the same had been found to be a true Bill by any Jury sworn and charged to inquire for the King for the Body of the County of such City or Town Corporate.

Indictments found by a Grand Jury of the County of any City or Town Corporate, or Inquisitions taken before the Coroner, may be ordered by the Court of Oyer, &c. there to be filed with the proper Officer of the next adjoining County, and the Defendants removed to the Gaol thereof, &c.

III. And be it further enacted by the Authority aforesaid, That if it shall appear to any Court of Oyer and Terminer or General Gaol Delivery for the County of any City or Town Corporate, that any Indictment found by any Grand Jury of the County of such City or Town Corporate, or any Inquisition taken before the Coroner or Coroners of the County of such City or Town Corporate, or other Franchise, is fit and proper to be tried by a Jury of any next adjoining County, that it shall and may be lawful for the said Court of Oyer and Terminer or General Gaol Delivery, at the Prayer of any Defendant, to order such Indictment or Inquisition, and the several Recognizances, Examinations, and Depositions relative to such Indictments and Inquisitions, to be filed with the proper Officer, to be by him kept among the Records of the Courts of Oyer and Terminer and General Gaol Delivery for such next adjoining County, and to cause the Defendant or Defendants in such Indictment to be removed, by Writ of *Habeas Corpus*, to the Gaol of such next adjoining County; which Writ the said Court is hereby directed and authorized to issue, if such Defendant or Defendants be in the Prison of such City or Town Corporate: and if he, she, or they be not in such Prison, to commit such Defendant or Defendants to the Gaol of such next adjoining County, and to cause the Prosecutors and Witnesses against such Defendant or Defendants, to enter into a Recognizance or Recognizances to prosecute and give Evidence against such Defendant or Defendants at the Sessions of Oyer and Terminer and General Gaol Delivery for such next adjoining County; and that the same Proceedings and Trial shall be had, and the same Judgment shall be given, in such last-mentioned Court of Oyer and Terminer or General Gaol Delivery, as would and might be had and given in Cases

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of Indictments or Inquisitions for the like Offences, committed within such next adjoining Counties.

The Judges of the Court of King's Bench, &c. may on Application of the Prosecutor, cause Persons in Custody for Offences committed within the County of any City or Town Corporate, to be removed into the Custody of the Sheriff of the next adjoining County, for Trial; and direct Coroners to return to the Court of Oyer and Terminer Inquisitions, &c.

IV. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for any of the Judges of his Majesty's Court of King's Bench, or any of the Justices of Oyer and Terminer or General Gaol Delivery, for such next adjoining or other County as aforesaid, on the Application of any such Prosecutor or Prosecutors ten Days next before the holding of any Sessions of Oyer and Terminer, or General Gaol Delivery, for such last mentioned County, by proper Writs of *Habeas Corpus*, which they are hereby empowered and authorized to issue, to cause any Person or Persons who may be in the Custody of any Sheriff or Sheriffs, or of the Keepers of any Gaol or Prison, charged with any Offence or Offences committed within the County of any such City or Town Corporate, to be removed into the Custody of the Sheriff of such next adjoining County, in order that he, she, or they may, for such Offence or Offences as aforesaid, be tried in such last-mentioned County; and by Order under the Hand of any one of the said Judges or Justices of Oyer and Terminer and General Gaol Delivery to direct the Coroner or Coroners of the County of any such City or Town Corporate, or other Franchise, to return to the next Court of Oyer and Terminer or General Gaol Delivery, to be holden for such next adjoining County, any Inquisition or Inquisitions, Examination or Deposition taken touching the Death of any Person or Persons within the Limits of his or their Jurisdictions; and that whenever, in pursuance of this Act, any Bill or Bills of Indictment shall be found by such Grand Jury as aforesaid, against any Person or Persons, for any Offence or Offences committed or charged to be committed, within the County of any City or Town Corporate, that it shall and may be lawful for the said Courts of Oyer and Terminer and General Gaol Delivery, to issue Process for apprehending the Person or Persons against whom such Bill or Bills of Indictment shall be found, if not in Custody, and to compel the Attendance of Witnesses upon the Trial of such Indictments, in like Manner as in Cases of Indictments found in any such Court of Oyer and Terminer or General Gaol Delivery, for Offences committed within such adjoining Counties.

Recognizances entered into for Prosecution of Persons for Offences committed within the County of any City or Town Corporate &c. to be forfeited, if the Parties, on Notice of Intention to prefer Indictments in the next adjoining County, do not appear, &c.

V. And be it enacted by the Authority aforesaid, That every Recognizance which, after the passing of this Act, shall be entered into for the Prosecution of any Person or Persons, for any Offence or Offences committed, or charged to be committed, within the County of any City or Town Corporate, or within any Liberty or Franchise, and every Recognizance for the Appearance as well of Witnesses to give Evidence upon any Bill of Indictment to be preferred, or any Inquisition found for any such Offence or Offences as aforesaid, as for the Appearance of any Person or Persons to answer our Lord the King, for or concerning the same, shall be forfeited, if the Prosecutor shall, ten Days previous to the holding of the next

Court of Oyer and Terminer or Gaol Delivery, in the next adjoining or other County, give Notice to the Person bound in such Recognizance to give Evidence upon such Bill of Indictment, or to answer our said Lord the King as aforesaid, of the Intention to prefer such Indictment, or to remove such Inquisition in or into the next adjoining or other County, and the Party bound in such Recognizance shall not appear, prosecute, or give, or be ready to give, Evidence at such Court; but if the Person bound in such Recognizance, after Notice as aforesaid, shall appear at such Court of the next adjoining or other County, prosecute, give, or be ready to give, Evidence on such Indictment before the Grand Jury, and on the Trial thereof, or on the Trial of such Inquisition, then the said Recognizance shall be discharged in such and the like Manner as if the Person bound in such Recognizance had complied with the Terms thereof.

Notice left at the Abode of Recognizors who cannot be found, to be effectual.

VI. Provided also, That in case the Person or Persons who shall enter into such Recognizance or Recognizances as aforesaid, cannot be found, and such Notice as aforesaid be left at his, her, or their last Place of Abode, ten Days previous to the holding such Sessions as last aforesaid, the same shall be as good and effectual as if the same were left with the Person or Persons who shall enter into such Recognizance or Recognizances; and that no such Recognizance shall be estreated or returned into the Court of Exchequer until the next following Session of Oyer and Terminer or General Gaol Delivery to be holden for such next adjoining County, in order that such Recognizance or Recognizances may be discharged, in case the Person or Persons who shall have entered into the same shall shew to such Court of Oyer and Terminer or General Gaol Delivery sufficient Cause for discharging the same.

Recognizances not to be estreated until the next following Sessions for the adjoining County.

Persons before whom such Recognizances shall be entered into, &c. to return them to the next Court of Oyer and Terminer for the next adjoining County, upon Notice of Intention to prosecute at such Sessions for any Offence committed within the County of any City or Town Corporate. After such Notice, Bills shall not be preferred, &c. at any Sessions for the County of the City or Town Corporate.

VII. And be it enacted by the Authority aforesaid, That all and every Person and Persons, before whom any such Recognizance or Recognizances as aforesaid shall be entered into, or by whom any Examination or Deposition shall be taken, touching any such Offence or Offences as aforesaid, shall, and they are hereby required to return the same to the next Court of Oyer and Terminer and General Gaol Delivery for such next adjoining County as aforesaid, upon such Prosecutor or Prosecutors as aforesaid leaving at the Dwelling House or other Place of Abode of the Person or Persons before whom such Recognizance or Recognizances shall be entered into, or by whom such Examination or Deposition shall be taken, ten Days before the holding of any Sessions of Oyer and Terminer or General Gaol Delivery for such next adjoining or other County as aforesaid, Notice in Writing of his, her, or their Intention to prosecute such Indictment or Inquisition at such last-mentioned Sessions of Oyer and Terminer or General Gaol Delivery, for any Offence or Offences committed within the County of any City or Town Corporate; and that after the Delivery as aforesaid of any of the said Notices, it shall not be lawful for any Person or Persons to prefer any Bill

No. 66. 38 George III. c. 52.

or Bills of Indictment, or to return any Inquisition, for any Offence or Offences mentioned in the said Recognizances, or any of them, at or to any Sessions of Oyer and Terminer or General Gaol Delivery for the County of such City or Town Corporate.

Justices of Oyer and Terminer for the adjoining County may order the Expences of Prosecution, &c. to be paid, as if the Indictment had been tried in the Court of the County of the City or Town Corporate.

VIII. And be it further enacted by the Authority aforesaid, That in all Cases of Indictments, and other Proceedings, which may be tried before his Majesty's Justices of Oyer and Terminer or General Gaol Delivery for any County, in pursuance of the Provisions contained in this Act, it shall and may be lawful for such Justices to order the Expences of the Prosecution, and of the Witnesses, and of the several Rewards payable in pursuance of the Statutes in such Cases made and provided on the Conviction of Offenders, to be paid by and to the same Persons, and in the same Manner, as the same would be payable if such Indictment had been tried in the Court of Oyer and Terminer or General Gaol Delivery of the County of such City or Town Corporate.

York to be considered as next County to Kingston upon Hull, and Northumberland as next to Newcastle upon Tyne.

IX. And be it further enacted by the Authority aforesaid, That, for the Purposes of this Act, the County of *York* shall be considered as the next adjoining County to the County of the Town of *Kingston upon Hull*; the County of *Northumberland* as the next adjoining County to the County of the Town of *Newcastle upon Tyne*.

Act not to extend to certain Places;

X. Provided always, That nothing in this Act shall extend, or be construed to extend, to the Cities of *London* and *Westminster*, or the Borough of *Southwark*, or the City or County of the City of *Bristol*, or the City or County of the City of *Chester*, or to the Criminal Jurisdiction of the City of *Exeter* and County of the same City, unless in Cases of Indictment removed into his Majesty's Court of King's Bench by Writ of *Certiorari*, from any Court of Criminal Jurisdiction, within the said City or County of the said City of *Exeter*.

nor to take away any other ancient Privileges of Corporations, who shall not be liable to attend as Jurymen upon the Trial of any Cause in the County at large.

XI. Provided also, that nothing in this Act shall extend, or be construed to extend, to take away any other Rights or Privileges which have been anciently granted to such Corporations, by Royal Charters or Grants, and which have been immemorially held and enjoyed by such Corporations; but that they shall continue in the full Possession of all their other exlusive Rights and Privileges as much as if this Act of Parliament had never passed; and that they shall not be obliged to attend as Jurymen upon the Trial of any Cause or any Indictment which may be removed from the limited Jurisdiction to the County at large, nor upon the Trial of any other Cause, or any other Indictment, which may be tried before his Majesty's Justices of Assize, Oyer and Terminer, and General Gaol Delivery, in the next adjoining County.

Act not to authorize the preferring any Bill of Indictment for an Offence committed within the

XII. Provided always, and be it further enacted by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend, to enable any Person to prefer any Bill of Indictment for any Offence committed, or charged to be committed, within the County of any City or

Town Corporate, to the Jury of such next adjoining County as aforesaid, or to remove any Indictment or other Criminal Proceeding, except the Person preferring such Bill, or applying for such Removal, shall enter into a Recognizance before the Court where such Bill shall be preferred, or the Court or Magistrate to whom such Application shall be made, as the Case may be, in the Sum of forty Pounds, conditioned to pay the extra Costs attending the prosecuting for such Offence in such next adjoining County, provided the Court before whom the Trial is had shall be of Opinion that he ought to pay the same.

No. 66. 38 George III. c. 52.

County of any City or Town Corporate to the Jury of the next adjoining County, unless Recognizance be entered into to pay the extra Costs.

## No. 67.

44 George III. c. 102. — An Act for the more effectual Administration of Justice in those Parts of the United Kingdom of *Great Britain* and *Ireland* called *England* and *Ireland*, by the issuing of Writs of *Habeas Corpus ad testificandum*, in certain Cases. —[28th. *July* 1804.]

No. 67. 44 George III. c. 102.

'WHEREAS it is expedient, for the more effectual Administration of Justice in those Parts of the United 'Kingdom of *Great Britain* and *Ireland* called *England* and '*Ireland*, that further Provisions should be made for the issuing 'of Writs of *Habeas Corpus ad testificandum*, in certain 'Cases:' Be it therefore enacted and declared by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, it shall be lawful for any Judge of his Majesty's Courts of King's Bench or Common Pleas of *England* and *Ireland* respectively, or any Baron of his Majesty's Court of Exchequer of the Degree of the Coif in *England*, or any Baron of his Majesty's Court of Exchequer in *Ireland*, or any Justice of Oyer and Terminer or Gaol Delivery, being such Judge or Baron as aforesaid, at his Discretion, to award a Writ or Writs of *Habeas Corpus*, for bringing any Prisoner or Prisoners detained in any Gaol or Prison before any of the said Courts, or any Sitting of *Nisi Prius*, or before any other Court of Record in the said Parts of the said United Kingdom, to be there examined as a Witness or Witnesses, and to testify the Truth before such Courts, or any Grand, Petit, or other Jury, in any Cause or Causes, Matter or Matters, Civil or Criminal, whatsoever, which now are or hereafter shall be depending, or to be inquired into or determined in any of the said Courts.

Any Judge of the Superior Courts in England or Ireland may award Writs of Habeas Corpus for bringing Prisoners before Courts of Record to be examined as Witnesses.

II. And be it further enacted, That every Justice of Great Session in *Wales*, and in the County Palatine of *Chester*, shall have the like Authority within the Limits of his Jurisdiction.

In Wales Justices of Great Sessions shall have like Authority.

# PART IV. CLASS X.

## EVIDENCE.

### No. 1.

P. 5 Elizabeth, c. 9.—An Act for the Punishment of such as shall procure or commit any wilful Perjury.

No. 1. 5 Elizabeth, c. 9. Process served upon Witnesses to testify.

XII. PROVIDED also, and be it further enacted by the Authority aforesaid, That if any Person or Persons, upon whom any Process out of any of the Courts of Record within this Realm or *Wales* shall be served to testify or depose concerning any Cause or Matter depending in any of the same Courts, and having tendred unto him or them, according to his or their Countenance or Calling, such reasonable Sums of Money for his or their Costs or Charges, as having Regard to the Distance of the Places is necessary to be allowed in that Behalf, do not appear according to the Tenor of the said Process, having not a lawful and reasonable Let or Impediment to the contrary; that then the Party making Default, to lose and forfeit for every such Offence ten Pounds, and to yield such further Recompence (1.) to the Party grieved, as by the Discretion of the Judge of the Court, out of the which the said Process shall be awarded, according to the Loss and Hindrance that the Party which procured the said Process shall sustain, by reason of the Nonappearance of the said Witness or Witnesses, the said several Sums to be recovered by the Party so grieved against the Offender or Offenders, by Action of Debt, Bill, Plaint, or Information, in any of the Queen's Majesty's Courts of Record, in which no Wager of Law, Essoin or Protection to be allowed.

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(1.) The Action for a further Recompence will not lie unless it has been previously assessed by the Court out of which the Process issued; neither the Jury nor the Judge at Nisi Prius being competent to make the Assessment; Pearson *v.* Isles, Doug. 556. See the Observations in that Case, as to what will be a reasonable Let within the Statute. An Action on the Case will lie for Damages against a Witness who absents himself without any Excuse; dict. ibid. In Bland *v.* Swafford, 1 Peake, N. P. 60, Lord Kenyon held that no Action would lie against a Witness, unless the Cause was called on and the Jury sworn.

## No. 2.

### 7 James I. c. 12.—An Act to avoid the double Payment of Debts.*

No. 2. 7 James I. c. 12.

'WHEREAS divers Men of Trades, and Handicraftsmen 'keeping Shop-books, do demand Debts of their 'Customers upon their Shop-books long Time after the same 'hath been due, and when as they have supposed the Particu-'lars and Certainty of the Wares delivered to be forgotten, 'then either they themselves or their Servants have inserted 'into their said Shop-books divers other Wares supposed to be 'delivered to the same Parties, or to their Use, which in 'Truth never were delivered, and this of Purpose to increase 'by such undue Means the said Debt: And whereas divers of 'the said Tradesmen and Handicraftsmen, having received all 'the just Debt due upon their said Shop-books do oftentimes 'leave the same Books uncrossed, or any Way discharged, so 'as the Debtors, their Executors or Administrators, are often 'by Suit of Law enforced to pay the same Debts again to the 'Party that trusted the said Wares, or to his Executors or 'Administrators, unless he or they can produce sufficient Proof 'by Writing or Witnesses, of the said Payment, that may 'countervail the Credit of the said Shop-books, which few or 'none can do in any long Time after the said Payment:' Be it therefore enacted by the Authority of this present Parliament, That no Tradesman or Handicraftsman keeping a Shop-book as is aforesaid, his or their Executors or Administrators, shall, after the Feast of Saint *Michael* the Archangel next coming, be allowed, admitted or received to give his Shop-book in Evidence in any Action for any Money due for Wares hereafter to be delivered, or for Work hereafter to be done, above one Year before the same Action brought, except he or they, their Executors or Administrators, shall have obtained or gotten a Bill of Debt or Obligation of the Debtor for the said Debt, or shall have brought or pursued against the said Debtor, his Executors or Administrators, some Action for the said Debt, Wares or Work done, within one Year next after the same Wares delivered, Money due for Wares delivered, or Work done.

In what Case a Tradesman's Shop-book shall be no Evidence to recover a Debt.

II. Provided always, That this Act, or any Thing therein contained, shall not extend to any Intercourse of Traffick, Merchandizing, Buying, Selling, or other Trading or Dealing for Wares delivered or to be delivered, Money due, or Work done or to be done, between Merchant and Merchant, Mer-

Intercourse of Traffick between Merchants.

* At the Time of passing this Act the Law of Evidence was in a very unsettled state, and had by no means acquired that systematic Regularity by which it is at present distinguished. The Act, by excluding the Admissibility of the Shop Book as Evidence, except under particular Circumstances, would seem to recognize that such Evidence, so far as it is not positively restrained, might be admitted; which is contrary to the known and established Course of the Law, as at present administered; and to several Cases subsequent to the Act, in which such Evidence was expressly disallowed.

No. 2. 7 James I. c. 12. chant and Tradesman, or between Tradesman and Tradesman, for any Thing directly falling within the Circuit or Compass of their mutual Trades and Merchandize, but that for such Things only they and every of them shall be in Case as if this Act had never been made; any thing herein contained to the contrary thereof notwithstanding.

Continuance of this Act. III. This Act to continue to the End of the first Session of the next Parliament, and no longer. [3 Car. I. c. 4. continued until the End of the first Session of the next Parliament, and farther continued by 16 Car. I. c. 4.]

## No. 3.

P. 7 and 8 William III. c. 34.—An Act that the solemn Affirmation and Declaration of the People called *Quakers*, shall be accepted instead of an Oath in the usual Form.

No. 3. 7 and 8 William III. c. 34. 'WHEREAS divers Dissenters, commonly called *Quakers*, 'refusing to take an Oath in Courts of Justice and 'other Places, are frequently imprisoned, and their Estates 'sequestred, by Process of Contempt issuing out of such Courts, 'to the Ruin of themselves and Families:' For Remedy thereof be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Fourth Day of *May*, which shall be in the Year of Our Lord One thousand six hundred ninety-six, every Quaker within this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, who shall be required upon any lawful Occasion to take an Oath, in any Case where by Law an Oath is required, shall, instead of the usual Form, be permitted to make his or her solemn Affirmation or Declaration in these Words following, *viz.*

Quakers to make the following Affirmation.

'I *A. B.* do declare, in the Presence of Almighty God, 'the Witness of the Truth of what I say.'

which is to be of the same Force in Law as an Oath. II. Which said solemn Affirmation or Declaration shall be adjudged and taken, and is hereby enacted and declared to be of the same Force and Effect to all Intents and Purposes, in all Courts of Justice and other Places where by Law an Oath is required within this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, as if such Quaker had taken an Oath in the usual Form.

Penalty on false Affirmation. III. And be it further enacted by the Authority aforesaid, That if any Quaker, making such solemn Affirmation or Declaration, shall be lawfully convicted, wilfully, falsly, and corruptly to have affirmed or declared any Matter or Thing, which, if the same had been in the usual Form, would have amounted

to wilful and corrupt Perjury; every such Quaker so offending shall incur the same Penalties and Forfeitures, as by the Laws and Statutes of this Realm are enacted against Persons convicted of wilful and corrupt Perjury. (1.)

No. 3. 7 and 8 William III. c. 34.

VI. Provided, and be it enacted, That no Quaker or reputed Quaker shall by virtue of this Act be qualified or permitted to give Evidence in any criminal Causes, or serve on any Juries, or bear any Office or Place of Profit in the Government; any Thing in this Act contained to the contrary in any wise notwithstanding. (2.)

Quakers not to give Evidence in criminal Causes, &c.

VII. Provided, That this Act shall continue in Force for the Space of Seven Years, and from thence to the End of the next Session of Parliament, and no longer.

This Act was made perpetual by 1 Geo. I. stat 2. c. 6.

(1.) Sections 4 and 5 relate to the Recovery of Tithes:—See P. 2. C. 2. No 8.

(2.) The Affirmation of Quakers may be received as Evidence in penal Actions; Atcheson *v.* Everett, Coup. 382: so on Motions for an Attachment for Non-performance of Awards, which is regarded as a civil Remedy; Taylor *v.* Scott and other Cases, cited ibid.: in an Affidavit in defence of the Party himself, upon an Application for an Information; R. *v.* Shacklington, Andr. 201, n.; R. *v.* Gardener, 2 Bur. 1117: on a Rule on the Crown Side of B. R. respecting an Appointment of Overseers; R. *v.* Turner, 2 Str. 1219. NOT to support a criminal Information, or Articles of the Peace against another; R. *v.* Wych, 2 Str. 872; R. *v.* Gardner, ub. sup.; R. *v.* Green, Str. 527: on an Appeal of Felony; Castill *v.* Bainbridge, Cowp. 392.

About the Year 1798 a Bill was brought into Parliament by the late Serjeant Adair, who had been Recorder of London, to admit the Affirmation of Quakers in criminal Cases, which, as far as my Recollection serves, passed the House of Commons, but was thrown out in the House of Lords, upon the Opposition of Lord Kenyon. Considering that Testimony given upon Affirmation is subject to all the penal Consequences of Perjury, I think it would be very desirable to remove the Exceptions as to criminal Cases; for with respect to the moral and religious Obligation, few Persons who would venture to assert a Falsehood in a Court of Justice would hesitate upon the religious Scruple of taking an Oath; and the Exception rather operates in Exclusion of the Truth, which might be otherwise manifested, on Behalf of the Public or the Party accused, than as a Bar to the Reception of a Falsehood.

## No. 4.

22 George II. c. 46. — An Act to continue several Laws for preventing Exactions of the Occupiers of Locks and Wears upon the River *Thames* Westward, and for ascertaining the Rates of Water Carriage upon the said River; * * * * * * and for allowing Quakers to make Affirmation in Cases where an Oath is or shall be required.

P.

'XXXVI. AND whereas a Doubt hath arisen, whether the solemn Affirmation or Declaration of 'the People called *Quakers*, prescribed by an Act made 'in the eighth Year of the Reign of his late Majesty King '*George* the First, intituled, " An Act for granting the People

No. 4. 22 George II. c. 46. 8 Geo. 1. c. 6.

No. 4.
22 George II. c. 46.

'called *Quakers*, such Forms of Affirmation or Declaration as 'may remove the Difficulties which many of them lie under)"(1.) 'can be allowed and taken instead of an Oath, in any Case 'wherein by any Act or Acts of Parliament an Oath is requir- 'ed, unless the said Affirmation or Declaration be by such Act 'or Acts of Parliament, particularly and expressly directed to 'be allowed and taken instead of such Oath; by Reason 'of which Doubt the Testimony of the said People called '*Quakers*, is frequently refused; whereby the said People, 'and others requiring their Evidence, are subjected to great 'Inconveniences:' Therefore for removing the said Doubt, Be it enacted and declared by the Authority aforesaid, That in all Cases wherein by any Act or Acts of Parliament now in Force, or hereafter to be made, an Oath is or shall be allowed, authorized, directed, or required, the solemn Affirmation or Declaration of any of the People called *Quakers*, in the Form prescribed by the said Act made in the eighth Year of his said late Majesty's Reign, shall be allowed and taken instead of such Oath, although no particular or express Provision be made for that Purpose in such Act or Acts; and all Persons who are or shall be authorised or required to administer such Oath, shall be, and are hereby authorized and required to administer the said Affirmation or Declaration; and the said solemn Affirmation or Declaration, so made as aforesaid, shall be adjudged and taken, and is hereby enacted and declared to be of the same Force and Effect, to all Intents and Purposes in all Courts of Justice, and other Places, where by Law an Oath is or shall be allowed, authorized, directed, or required, as if such *Quaker* had taken an Oath in the usual Form; and if any Person making such Affirmation or Declaration, shall be lawfully convicted of having wilfully, falsely, and corruptly affirmed and declared any Matter or Thing, which, if the same had been deposed in the usual Form, would have amounted to wilful and corrupt Perjury, every Person so offending shall incur and suffer the like Pains, Penalties, and Forfeitures, as by the Laws and Statutes of this Realm are to be inflicted on Persons convicted of wilful and corrupt Perjury.

Affirmation of Quakers allowed in all Cases in lieu of an Oath required by Act of Parliament.

Penalty on false affirming.

XXXVII. Provided nevertheless, and be it enacted, That no *Quaker* shall, by virtue of this Act, be qualified or permitted to give Evidence in any Criminal Cases, or to serve on Juries, or to bear any Office or Place of Profit in the Government; any Thing herein contained to the contrary notwithstanding.

Not to extend to Criminal Cases, &c.

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(1.) This Act only prescribes Forms of Affirmations, instead of the Oaths to Government; and enacts, Sec. 3, that the Provisions 7 and 8 W. III. c. 34, shall, except so far as thereby repealed, continue of the same Force as before.

## No. 5.

22 George II. c. 30.—An Act for encouraging the People known by the Name of *Unitas Fratrum*, or *United Brethren*, to settle in his Majesty's Colonies in *America*.

[Moravians are allowed, in lieu of an Oath, to make an Affirmation, except in criminal Cases.]

## No. 6.

13 George III. c. 63.—An Act for establishing certain Regulations for the better Management of the Affairs of the *East India* Company, as well in *India* as *Europe*. P.

No. 6. 13 George III. c. 63. The Chancellor, &c. may issue Warrants for the Examination of Witnesses in India.

XLII. AND be it further enacted by the Authority aforesaid, That in all Cases of Proceedings in Parliament, touching any Offences against this Act, or any other Offences committed in *India*, it shall and may be lawful for the Lord High Chancellor, or Speaker of the House of Lords, and also for the Speaker of the House of Commons for the Time being, in like Manner, to issue his or their Warrant or Warrants to the Governor-General and Council of the said United Company's Presidency of *Fort William*, and to the Chief Justice and Judges of the said Supreme Court of Judicature, or the Judges of the Mayor's Court at *Madrass*, *Bombay*, or *Bencoolen*, as the Case may require, for the Examination of Witnesses; and such Examination shall be returned to the Lord High Chancellor, or Speaker of the House of Lords, or to the Speaker of the House of Commons respectively, and proceeded upon in the same Manner, in all Respects, as if the several Directions herein-before prescribed and enacted in that Behalf were again particularly repeated; and every such Examination, returned either to the Lord Chancellor, or Speaker of the House of Lords, or to the Speaker of the House of Commons, as aforesaid, shall be deemed good and competent Evidence, and shall be allowed and read in both Houses of Parliament, or either of them respectively, as Occasion may require; any Law or Usage to the contrary notwithstanding.

## No. 7.

27 George III. c. 29.—An Act for obviating Objections to the Competency of Witnesses in certain Cases.

No. 7. 27 George III. c. 29. Preamble.

'WHEREAS by divers Acts of Parliament pecuniary
' Penalties inflicted for certain Offences, or Parts of
' such Penalties, are directed to be applied for or to the Use of
' the Poor of the Parishes, Townships, or Places, within
' which such Offences were committed: And whereas, in divers

No. 7. 27 George III, c. 29.

'of such Cases, the Parishioners, or Inhabitants of such Pa-'rishes, Townships, or Places, are not admissible Witnesses 'to prove the Perpetration of such Offences within such 'Parishes, Townships, or Places, by reason whereof it has 'been found difficult to bring Offenders to Justice;' be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of *August* one thousand seven hundred and eighty-seven, the Inhabitants of every Parish, Township, or Place, shall be deemed and taken to be competent Witnesses for the Purpose of proving the Commission of any Offence within the Limits of such Parish, Township, or Place, notwithstanding the Penalty incurred by such Offence, or any Part thereof, is or may be given or applicable to the Poor of such Parish, Township, or Place, or otherwise, for the Benefit or Use, or in Aid or Exoneration of such Parish, Township, or Place.

From Aug. 1, 1787, the Inhabitant of any Place to be a competent Witness to prove an Offence, though the Place may be benefited by the Conviction of the Offender,

II. Provided always, and be it enacted by the Authority aforesaid, That nothing in this Act contained shall extend to any Action or Proceeding in which the Penalty or Penalties to be recovered shall exceed the Sum of twenty Pounds.

unless the Penalty exceed 20l.

## No. 8.

### 31 George III. c. 35.—An Act to render Persons convicted of Petty Larceny competent Witnesses.*

No. 8. 31 George III. c. 35.

Preamble.

'WHEREAS Persons convicted of Grand Larceny are by 'their Punishment restored to their Credit as Wit-'nesses, but Persons convicted of Petty Larceny are rendered 'and remain wholly incompetent to be examined as Wit-'nesses;' be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the twenty-fourth Day of *June* one thousand seven hundred and ninety-one, no Person shall be an incompetent Witness by reason of a Conviction for Petty Larceny.

Persons convicted of Petty Larceny to be competent Witnesses.

* This Act was proposed by Lord Kenyon, and is generally quoted with his Name. It is sometimes contended, that as Persons convicted of grand Larceny, and having received Judgment, are not competent Witnesses until after the Punishment is complete, the same Rule must, by Analogy, be applied in the Construction of this Act to Persons convicted of petty Larceny; but the express Language of the Act itself, declaring that no Person by reason of Conviction for petty Larceny shall be incompetent, will clearly not admit of that Construction. I have indeed heard it argued, that as the Act only speaks of Conviction for petty Larceny, it does not apply to the Case of Judgment: but as a Conviction without Judgment never amounted to a Disqualification, the Act, according to that Construction, would be nugatory; for it does not provide for the Restoration of the Competence of Witnesses once disqualified, but enacts generally that the Disqualification shall not take place.

No. 9.

41 George III. c. 90. — An Act for the more speedy and effectual Recovery of Debts due to his Majesty, his Heirs and Successors, in Right of the Crown of the United Kingdom of *Great Britain* and *Ireland*; and for the better Administration of Justice within the same. — [2d. *July* 1801.] P.

No. 9. 41 George III. c. 90. The Statutes of England, and of Great Britain, printed and published by the King's Printer shall be received as conclusive Evidence in any Court in Ireland; and the Statutes of Ireland prior to the Union, so printed and published, shall in like Manner be Evidence in any Court in Great Britain.

IX. AND, for the better and more effectual Proof of the Statute Law of the Kingdoms of *Great Britain* and *Ireland*, and of *England* and *Ireland*, previous to the Union of the said Kingdoms, in all Courts of Civil and Criminal Jurisdiction in every Part of the said United Kingdom; be it enacted, That the Copy of the Statutes of the Kingdom of *England*, and of the Kingdom of *Great Britain* since the Union with *Scotland*, printed and published by the Printer duly authorized to print and publish the same by his Majesty, or by any of his Royal Predecessors, shall be received as conclusive Evidence of the several Statutes made and enacted prior to the Union of the Kingdoms of *Great Britain* and *Ireland*, by the Parliaments of *England* and *Great Britain* respectively, in all Suits, Actions, or Prosecutions respectively, commenced, instituted, or carried on, or to be commenced, instituted, or carried on, in any Court of Civil or Criminal Jurisdiction, in that Part of the United Kingdom called *Ireland*; and in like Manner the Copy of the Statutes of the Kingdom of *Ireland*, made and enacted by the Parliament of the same, prior to the Union of the Kingdoms of *Great Britain* and *Ireland*, and printed and published by the Printer, duly authorized by his Majesty, or any of his Royal Predecessors, to print and publish the same, shall be received as conclusive Evidence of the several Statutes made and enacted by the Parliament of *Ireland*, prior to the Union of the Kingdoms of *Great Britain* and *Ireland*, in all Suits, Actions, or Prosecutions respectively, commenced, instituted, or carried on, or to be commenced, instituted, or carried on, in any Court of Civil or Criminal Jurisdiction, in that Part of the United Kingdom called *Great Britain*.

No. 10.

44 George III. c. 102. — An Act for the more effectual Administration of Justice in those Parts of the United Kingdom of *Great Britain* and *Ireland* called *England* and *Ireland*, by the issuing of Writs of *Habeas Corpus ad testificandum*, in certain Cases. — [28th. *July* 1804.]

[Inserted ante. Class IX. No. 67.]

## No. 11.

46 George III. c. 37.—An Act to declare the Law with respect to Witnesses refusing to answer.—[5th. *May* 1806.]*

No. 11. 46 George III. c. 37.

'WHEREAS Doubts have arisen whether a Witness can 'by Law refuse to answer a Question relevant to 'the Matter in Issue, the answering of which has no Tendency 'to accuse himself, or to expose him to any Penalty or Forfei-'ture, but the answering of which may establish, or tend to 'establish that he owes a Debt, or is otherwise subject to 'a Civil Suit at the Instance of his Majesty, or of some other 'Person or Persons;' Be it therefore declared and enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That a Witness cannot by Law refuse to answer a Question relevant to the Matter in Issue, the answering of which has no Tendency to accuse himself or to expose him to Penalty or Forfeiture, of any Nature whatsoever, by Reason only, or on the sole Ground, that the answering of such Question may establish, or tend to establish that he owes a Debt, or is otherwise subject to a Civil Suit, either at the Instance of his Majesty, or of any other Person or Persons.

Witness cannot by Law refuse to answer on the Ground of subjecting himself to a Suit for Debt.

* This Act was occasioned by a Doubt which arose on the Proceedings in the Impeachment against Lord Melville; there being a considerable Difference of Opinion amongst the Judges, as to the Liability of a Witness to answer Questions which might affect his civil Interest.

## No. 12.

P. 54 George III. c. 170.—An Act to repeal certain Provisions in Local Acts, for the Maintenance and Regulation of the Poor; and to make other Provisions in relation thereto.—[30th. *July* 1814.]

No. 12 54 George III. c. 170.

IX. AND be it further enacted, That no Inhabitant or Person rated or liable to be rated to any Rates or Cesses of any District, Parish, Township or Hamlet, or wholly or in Part maintained or supported thereby, or executing or holding any Office thereof or therein, shall, before any Court or Person or Persons whatsoever, be deemed and taken to be by reason thereof an incompetent Witness for or against such District, Parish, Township or Hamlet, in any Matter relating to such Rates or Cesses; or to the Boundary between such District, Parish, Township or Hamlet, and any adjoining District, Parish, Township or Hamlet; or to any Order of Removal to or from such District, Parish, Township or Hamlet; or the Settlement of any Pauper in such District, Parish,

Inhabitants not incompetent Witnesses in certain Cases on Behalf of or against Parishes.

Township or Hamlet; or touching any Bastards chargeable or likely to become chargeable to such District, Parish, Township or Hamlet; or the Recovery of any Sum or Sums for the Charges or Maintenance of such Bastards; or the Election or Appointment of any Officer or Officers, or the Allowance of the Accounts of any Officer or Officers of any such District, Parish, Township or Hamlet; any Law, Usage, Statute or Custom to the contrary in any wise notwithstanding.

No. 12.
54 George III. c. 170.

# Part IV. Class XI.

## COSTS*.

* The Notes upon this Subject are extracted from the accurate and judicious Treatise of Mr. Serjeant Hullock. For Costs in Replevin, Error, Actions against Justices of Peace, and other Officers, see those respective Titles. For Costs in Cases where a Defendant pleads several Matters, Statute 4 Ann, c. 16, s. 5, ante, II. 23. For Costs in Slander, 21 Jac. I. c. 16, ante. Class 8, No. 4. For Costs in Actions on Judgments, Statute 43 Geo. III. c. 46, ante, Class 3, No. 36. For Costs in Prosecutions for Felony, and Proceedings before Justices of Peace, Stat. 18 Geo. III. c. 19. post. VI. IX. 1. For Costs in Cases of Information and Certiorari, post P. V. Title *Criminal Proceedings*.

### No. 1.

### 6 Edward I. (Statute of Gloucester) c. 1.—Several Actions wherein Damages shall be recovered.

No. 1. 6 Edward I, c. 1.

The Alienee of a Disseisor shall be charged with Damages.

" WHEREAS heretofore " Damages were not " awarded in Assises of *Novel* " *disseisin*, but only against " the Disseisors:" 'it is provided, That if the Disseisors ' do aliene the Lands, and have ' not whereof there may be ' Damages levied, that they ' to whose Hand such Tenements ' shall come, shall be ' charged with the Damages, ' so that every one shall answer ' for his Time. It is provided ' also, That the Disseisee shall ' recover Damages in a Writ ' of Entry, upon *Novel disseisin* against him that is found ' Tenant after the Disseisor.

Damages in Mortdauncestor

' It is provided also, That ' where before this Time Damages ' were not awarded in a ' Plea of *Mortdauncestor* (but ' in case where the Land was

*Ex Rot. in Turr.* Lond.

CUM avaunt ces houres damages de fussent agardez en assise de novele disseisine fors tauntsoulement vers les disseisisurs [*disseisours*] purveu est que si les disseisours alienent les tenemenz & neient dunt les damages pussent estre levez qe ceus en qi mains icels tenemenz devendrunt seient charge des damages issi qe chescun respoigne de son tens. Purveu est ensement qe le deseisi recovre damage en bref de Entre sur novele disseisine vers celui qi est trove tenaunt apres le deseisur. Purveu est ensement qe la ou en avaunt ces houres damages ne furent agardez en ple de mort de auncestre fors en cas la ou tenement fu recovere vers le chief seignour qe desoremes damages seient

No. 1.
6 Edward I. c. 1.

*Ex Rot. in Turr.* Lond.
agardez en touz cas ou en recovre par assise de mort de auncestre si com est avauntdit en assise de novele disseisine en mesme la manere recovre lem damages par bref de Cosinage del Ael e del Besael.

'recovered against the Chief 'Lord) that from henceforth 'Damages shall be awarded 'in all Cases where a Man 'recovereth by Assise of '*Mortdauncestor*, as before is 'said in Assise of *Novel disseisin*: And likewise Damages 'shall be recovered in Writs 'of *Cosinage, Aiel,* and *Besaiel.*'

Damages in Cosinage, Aiel, Besaiel.

Cotton *MS.* Vespas. B. 7.
[*Et lou avant ces heurez damages ne furent taxes fors a la value del issue de la terre qe le demandant print & poet prendre desormes recovre vers' le tenant les coustages de son bref purchase enseblement ove lez damages avantdits Et tout ceo soit tenu en tout cas ou homme recover damages.*]
*Ex Rot. in Turr.* Lond.
II. E seit desoremes en mesme la manere chescun tenu a rendre damages la ou om recovre vers lui de sa entrusiun ou de sun fet demeisne.

"II. And whereas before "Time Damages were not "taxed, but to the Value of "the Issues of the Land;" 'it is provided, That the Demandant may recover against 'the Tenant the Costs of his 'Writ purchased, together 'with the Damages abovesaid. 'And this Act shall hold Place 'in all Cases where the Party is 'to recover Damages (1.) And 'every Person from henceforth 'shall be compelled to render 'Damages, where the Land is 'recovered against him upon 'his own Intrusion, or his own 'Act.'

Where Damages shall be recovered, there Costs also.

(1.) See Hullock, c. 1. sec. 1.
In Pilfold's Case, 10 Co. 116, it was laid down, that in Actions where a Man, either before or by the Statute of Gloucester, should not recover Damages, if afterwards another Statute in a new Case give Damages, then the Plaintiff (unless Costs are expressly given by such later Statute) should not recover Costs. And this Rule was assented to by three of the Judges of the Common Pleas, (Willes J. contra) Witham *v.* Hill, 2 Wels. 91, Barnes, 151. According to Lord Kenyon's Note of this Case, cited in Creswell *v.* Houghton, 6 T. R. 355, Willes said—"I agree that when a Statute subsequent to the Statute of Gloucester gives an Action where no Damages were sustained before, the Plaintiff is not entitled to Costs; but in all Cases where a Party sustains a Damage, and a subsequent Statute gives the Remedy, the Party is intitled to Costs." In the Case of Witham *v.* Hill, it was ruled, that the Plaintiff was entitled to Costs in an Action against the Hundred on the Riot Act, 1 Geo. I. st. 2. c. 5, (the Judges who admitted the Authority of Pilfold's Case thinking, that the particular Case fell within the Rule, as Damages might have been before recovered against the particular Trespassers). In Gunthorn *v.* the Hund. of Theale, 3 Bur. 1723, it was incidentally held, that the Plaintiff was intitled to Costs in an Action against the Hundred for maliciously setting Fire to a Barn, (which being previously a Felony, does not admit of the Distinction last mentioned). Some Doubts were thrown upon the Authority of that Case, in Wilkinson *v.* Abbot, Cowp. 367; but the Doctrine was established in Wilkinson *v.* the Hundred of Caleswoith, 1 T. R. 71. Costs are allowed on the Statute of Hue and Cry; Penkney *v.* Inhab. of East Hundred, 2 Saund. 379. In Creswell *v.* Hoghton, 6 T. R. 355, it was ruled that the Plaintiff was intitled to Costs in an Action on 23 Henry VI. c. 9, against the Sheriff, for refusing to take Bail, on the Ground that the Plaintiff might have recovered Damages before the Statute of Gloucester, provided he took the proper Means to compel the Sheriff to accept Bail; namely, by suing out a Writ of Mainprize. Lord Kenyon,

in referring to the Cases of Quare Impedit, and Actions for Tithes, observes, that in those the Party had no Right of Action before the Statute of Gloucester: Quare Impedit was considered as a mere spiritual Concern; so Tithes could not be recovered in the Imperial Courts before the Reign of Edw. VI. In Ward *v.* Snell, 1 H. B. 10, it was ruled that the Plaintiff was intitled to Costs in an Action on the Habeas Corpus Act, 31 Ch. II. c. 2, for the Penalty of £100, for not delivering a Copy of a Warrant of Commitment. So, in Tyte *v.* Glode, 7 T. R. 267, in an Action against the Sheriff, upon 29 Eliz., for taking more than is allowed upon an Execution; and it was there laid down, upon the Authority of the Cases above cited, that when, by any Act since the Statute of Gloucester, an Action is given to the *Party grieved*, he is intitled to Costs, though he had no Remedy before such Act; and see the Mayor, &c. of Plymouth *v.* Werring, Willes, 410. There are no Costs upon an Action at the Suit of a common Informer, who is not a Party grieved, unless expressly given; see Shore *v.* Mavisten, 1 Salk. 206. Nor in a Traverse of an Inquisition; Rex *v.* Inhab. of Glastonbury, 2 Str. 1069. Where a Statute gives double or treble Damages, the Costs are also doubled or trebled; Hullock.

As to Costs in Actions upon Jail Grants; see 43 Geo. III. c. 46, ante. Class 3.

There are no Costs in Actions purely real; but Damages, and consequently Costs, may be carried in Actions of a mixed Nature, at Assize; 2 Inst. 286.

As to Scire Facias, Prohibition, Waste, Debt for not setting out Tithes; see 8 and 9 W. III. c. 11, post.

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## No. 2.

### 23 Henry VIII, c. 15.—An Act that the Plaintiff being nonsuited, shall yield Damages to the Defendants in Actions personal, by the Discretion of the Justices.

No. 2. 23 Henry VIII. c. 15.

BE it enacted by the King our Sovereign Lord, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons, at any Time after the Feast of the *Purification* of our Lady, in the Twenty-third Year of the Reign of our Sovereign Lord King *Henry* the Eighth, commence or sue in any Court of Record, or elsewhere in any other Court, any Action, Bill, or Plaint, of Trespass upon the Statute of King *Richard* the Second, made in the Fifth Year of his Reign, for Entries into Lands and Tenements, where none Entry is given by the Law, or any Action, Bill, or Plaint of Debt or Covenant, upon any Especialty made to the Plaintiff or Plaintiffs, or upon any Contract supposed (1.) to be made between the Plaintiff or Plaintiffs, and any other Person or Persons, or any Action, Bill, or Plaint of Detinue of any Goods or Chattels, whereof the Plaintiff or Plaintiffs shall suppose that the Property belongeth to them, or to

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(1.) It is well known that Persons suing as Executors or Administrators are not liable to Costs; the Reason generally assigned for which is, that they may be ignorant of the true Circumstances of the Case; but in Tattersall *v.* Groote, 2 B. and P. 253, Lord Eldon says, "that the Doctrine seems to be founded on this Act, of which all the Cases are an Exposition. Attending to the Language of the Act, perhaps we may be authorized to say, that the sound Principle on which the Exemption of Executors and Administrators rests, is not the Degree of Ignorance under which they may be supposed to lie, but that the Exemption founds itself on the Description of the Words contained in the Statute on which Costs are to be paid: the Words are —'Any

any of them, or any Action, Bill, or Plaint of Account, in the which the Plaintiff or Plaintiffs suppose the Defendant or Defendants to be their Bailiff or Bailiffs, Receiver or Receivers of their Manor, Mese, Money, or Goods, to yield Account, or any Action, Bill, or Plaint upon the Case, or upon any Statute, for any Offence or Wrong personal immediately supposed to be done to the Plaintiff or Plaintiffs, and the Plaintiff or Plaintiffs in any such Kind of Action, Bill, or Plaint, after Appearance of the Defendant or Defendants, be nonsuited, or that any Verdict happen to pass, by lawful Trial, against the Plaintiff or Plaintiffs in any such Action, Bill, or Plaint, that then the Defendant or Defendants in every such Action, Bill, or Plaint, shall have Judgment to recover his Costs against every such Plaintiff or Plaintiffs; and that to be assessed and

No. 2. 23 Henry VIII. c. 15.

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Action, &c. upon any Especialty made to the Plaintiff or Plaintiffs, or upon any Contract supposed to be made between the Plaintiff, &c.' The Statute of 4 Jac. I. does not carry the Matter further: the subsequent Allusion is to 'any Offence or Wrong personal, *immediately* supposed, &c.'"

Any general Statutes giving Costs to Defendants are held not to apply to Actions brought by Executors, as was ruled with respect to a Plea of Bankruptcy, on 5 Geo. II. c. 30. § 7, in Martin *v.* Norfolk, 1 H. B. 528.

The Exemption is of very great Hardship in its Principle and Operation: however free from Censure an Executor or other Person may be who brings an Action under a mistaken View of the Circumstances of the Case, there is no Reason for subjecting the other Party, who is equally free from Censure, to the Expense arising from such Mistake; and there would be nothing inequitable in requiring those on whose Behalf the Experiment is to be made, to include the Indemnity of a Defendant from Costs to which he is wrongfully subjected in the Calculation of Success or Failure. In Point of Fact, great Extortion is frequently committed, by bringing unfounded or experimental Actions, in the Expectation of Submission to an unjust or questionable Demand being preferred to a successful but expensive Resistance.

The Cases respecting an Executor's Liability to or Exemption from Costs are very numerous, and are fully collected in Mr. Hullock's Treatise, chap. 3. s. 1.

The general Conclusion from all the Cases is, that the Exemption depends upon the Question whether the Plaintiff was obliged to sue as Executor or not; and that if he could sue *in proprio jure*, he is not protected from Payment of Costs by naming himself Executor.

In several Cases it is laid down, that the Rule depends upon the Question whether the Money recovered would be Assets; but that Doctrine is contrary to the entire Current of Modern Authorities, as is evident from the Cases where an Executor is subjected to Costs on account of Trover in the Testator's Life-time, and Conversion after his Death; as to which see Bolland *v.* Spencer, 7 T. R. 358; Hobbes *v.* Smith, 10 E. 293. So if an Executor sue as such for Money received by the Defendant since the Testator's Death, for his Use, as Executor; Goldthwaite *v.* Petrie, 5 T. R. 234. In the marginal Abstract of the modern Case of Thompson *v.* Slent, 1 Taunt. 322, it is stated, that if the Money recovered would be Assets, the Executor, suing as such, is not liable to Costs; but there is nothing in the Decision itself to warrant that Representation. The Case arose on a special Demurrer for a Misjoinder of Counts on Promises to the Testator in his Life-time, and an *Insimul Computassent* with the Plaintiff, and his Wife, as Executrix. The Question of Costs being incidentally mentioned, the Court referred to Eaves *v.* Mocato, as cited in Jenkins *v.* Plume, 1 Salk. 207, in which it was held that, upon an *Insimul Computassent* with an Executor, the Defendant was not entitled to Costs, because the Promise begot no new Cause of Action, but only ascertained the old. They also referred to Ball *v.* Palmer, T. Jon. 47, upon a similar Count, when it was determined, (as was formerly held) that as the Money, if recovered, would be Assets, no Costs were pay-

No. 2. 23 Henry VIII. c. 15.

taxed by the Discretion of the Judge or Judges of the Court, where any such Action, Bill, or Plaint shall be commenced, sued, or taken; and also that every Defendant in such Action, Bill, or Plaint, shall have such Process and Execution for the Recovery and having of his Costs against the Plaintiff or Plaintiffs, as the same Plaintiff or Plaintiffs should or might have had against the Defendant or Defendants, in case that Judgment had been given for the Part of the said Plaintiff or Plaintiffs in any such Action, Bill, or Plaint.

He that sueth in Forma pauperis shall be otherwise punished.

II. Provided alway, That all and every such poor Person or Persons being Plaintiff or Plaintiffs in any of the said Actions, Bills, or Plaints, which at the Commencement of their Suits or Actions be admitted by Discretion of the Judge

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able. But this incidental Reference to a Doctrine opposed by so many modern Decisions, and which was in no respect necessary to the Decision of the Case, cannot be regarded as an Authority of any Consequence.

There are different Cases in which it is settled, that an Executor is not liable to Costs in an Action for Breach, in his own Time, of a Covenant with or Promise to the Testator; Tattersall *v.* Groote, 2 B. and P. 253; Cooke *v.* Lucas, 2 E. 395; which Cases fall within the established Principle, that the Plaintiff must necessarily name himself Executor. The Cases on Counts of *Insimul Computassent* are referable to the same Principle; for it is clear, that upon a general Count of that Description, as founded upon an Account between the Plaintiff and Defendant, the former could not recover upon an Acknowledgment of Money due to his Testator.

In Cockerill *v.* Kynaston, 4 T. R. 277, it is reported to have been decided, that if an Executor declare on a Trover and Conversion in the Testator's Lifetime, and also on a Trover and Conversion after his Death, the Evidence offered being only applicable to the first Count, and he be nonsuited, he is not liable to pay Costs. But in the subsequent Case of Bolland *v.* Spencer, 7 T. R. 358, Lord Kenyon said that there must be some Mistake in the Case. He said—"The Rule in favour of Executors is already sufficiently extensive. We all of us remember a Variety of Actions improperly brought by them, and which would not, perhaps, have been brought, had it not been for the Privilege which they have of being exempt from paying Costs." Clearly nothing could be less satisfactory than the supposed Decision in Cockerill *v.* Kynaston. If a Party gives no Evidence, he is nonsuited generally; and it would be the Height of Absurdity if he could exempt himself from the Consequences of such Nonsuit by giving Evidence which amounted to nothing, in support of particular Counts: and referring to Grimstead *v.* Shirley, 2 Taunt. 116, I find it said by Lawrence J.—"How can it depend on the Facts which appear at the Trial? Suppose the Cause is called on, and no Evidence is given, but the Plaintiff, instead of appearing, submits to a Nonsuit, we cannot see what the Facts were. The Plaintiff must take Care to have his Verdict on the right Count; and then if the Count gives Costs where it ought not, it is Error, but the Court can only look at the Record." The Decision in Grimstead *v.* Shirley is upon the old Case of two Counts in Trover, one stating a Conversion before and the other after the Death of the Testator, and upon Nonsuit Costs given against the Plaintiff. The marginal Abstract, that where a Plaintiff Executor adds one Count as Executor, stating a Cause of Action for which he might declare in his own Right, if he is nonsuited, he shall be liable to Costs, though not stated in those general Terms in the Body of the Case, is evidently the fair Result of all the Authorities upon the Subject.

An Executor is entitled to Exemption, although suing for the Benefit of others, who would equally be entitled to maintain the Action in their own Name: for instance, the Executor of a Person who effected a Policy of Insurance, suing on Behalf of the Persons for whose Benefit it was effected; Wilton *v.* Hamilton, 1 B. and P. 445. But where an Executor lent his Name to other Persons, under Circumstances which were held to be an Abuse of the Practice of the Court, the Court of C. B. made an Order upon him for Pay-

or Judges, where such Suits or Actions shall be pursued or taken, to have their Process and Council of Charity, without any Money or Fee paying for the same, shall not be compelled to pay any Costs by Virtue and Force of this Statute, but shall suffer other Punishment, as by the Discretion of the Justices or Judge, afore whom such Suits shall depend, shall be thought reasonable; any Thing afore rehearsed to the contrary hereof notwithstanding. (2.) No. 2. 23 Henry VIII. c. 15.

ment of Costs: the Costs were not made Part of the Judgment, which would have been Error on the Record; Comber *v.* Hardcastle, 3 B. and P. 115.— The following Note was subjoined to the Case of Eaves *v.* Mocato, in the 6th. Edition of Salkeld, Vol. I. p. 314, respecting the Cases where an Executor is or is not liable to Costs upon interlocutory Proceedings. In Eaves *v.* Mocato it was said by the Court, that if an Executor will not go on to Trial according to his Notice, he shall pay the Costs of Suit.

"An Executor or Administrator shall pay Costs if he be guilty of any Laches or Delay in the Progress of a Cause; Hullock, 189. R. that they are liable to Costs on Judgment of Non-pros.; Hawes *v.* Saunders, 3 Bur. 1584; Lamley *v.* Nichols, Cas. Pr. C. B. 14; [Higgs *v.* Parry, 6 T. R, 654]. In Nunez *v.* Modigliani, H. Bl. 217, Costs were paid by an Administrator for withdrawing his Record before Trial; but that Point was not the Question in Dispute; vide Hullock's Observations on the Case, pa. 192. As Leave to discontinue is in the Discretion of the Court, it is given with or without Costs, according to the Circumstances of the Case, and will depend upon whether there is Laches or Delay, or it is a fair Transaction. Where an Executor in an Action upon a Bond against an Heir, discovered just before the Trial was to come on that the Estate which he relied upon as Assets was conveyed by the Ancestor, he was allowed to discontinue without Costs, undertaking not to bring a fresh Action without Leave of the Court, Bennet *v.* Coker, 4 Bur. 1927; vide also Baynham *v.* Mathews, 2 Str. 871. But where one Executor brought the Action alone, there being others, he had only Leave to discontinue upon Payment of Costs; Harris *v.* Jones, 3 Bur. 1451; 1 Bl. 451. [So where the Executors first brought an Action against one of three Obligors, and were nonsuited on a Plea of Usury, and afterwards against a second, which went off *pro Defectu Juratorum*, and then brought an Action against all, in order to exclude the Evidence of one upon the Usury, and moved to discontinue the second; Melhursh *v.* Maunder, 2 N. R. 72.] In Ogle *v.* Moffat, Barnes, 133, an Executor was excused from Costs for not going on to Trial, his Witnesses being prevented by Accident from attending, and he being guilty of no wilful Default. On a Nonsuit Executors do not pay Costs; Bigland *v.* Robinson, 3 Salk. 105; nor on Judgment, as in case of a Nonsuit; per. Cur. in Bennet *v.* Coker. [Ruled accordingly; Booth *v.* Holt, 2 H. B. 277.]"

(2.) See Hullock, Ch. 3. Sec. 3.

## No. 3.

## 24 Henry VIII. c. 8. — An Act where Defendants shall not recover any Costs.

'BECAUSE as well many Recognizances, Obligations, Indentures and other Specialties, as also many Contracts heretofore have been taken and made between divers Persons being of the King's most honourable Council, and others his Subjects, and by and between other Persons, to the Use and Behoof of our said Sovereign Lord the King, for great Sums of Money, then being to his Grace due, and No. 3. 24 Henry VIII. c. 8.

No. 3. 24 Henry VIII c. 8.

for his Provisions, and other Causes; for which Debts, Actions by the Laws of this Realm be to be commenced, sued and prosecuted to the King's Use, by and in the Name and Names of the Person or Persons to whom the said Recognizances, Obligations and other Specialties were made, 'or by those to whom the said Contracts were made:' Be it therefore ordained and enacted by Authority of this present Parliament, That Albeit that the Plaintiff or Plaintiffs be or shall be nonsuited in any whatsoever Action, Suit, Bill or Plaint, commenced, or to be commenced, sued, or to be sued, to the Use of our said Sovereign Lord the King, his Heirs or Successors, Kings of *England*, or that it shall happen any Verdict to pass against any such Plaintiff or Plaintiffs, in any Action, Suit, Bill or Plaint, sued or to be sued, to the King's Use; the Defendant or Defendants shall not recover any Costs against any such Plaintiff or Plaintiffs; any Act or Statute made in this present Parliament, or any other Thing to the contrary being in any wise notwithstanding.

In what Case the Defendant shall not recover Costs.

## No. 4.

### 8 Elizabeth, c. 2.—An Act for the avoiding of wrongful Vexation touching the Writ of *Latitat*.

No. 4. 8 Elizabeth, c. 2.

The Defendant shall recover Costs and Damage, where the Plaintiff doth delay or discontinue his Suit, or is nonsuit, &c.

'WHERE divers Persons of their malicious Minds, and without any just Cause, do many Times cause and 'procure others of the Queen's Majesty's loving Subjects, to 'be very much molested and troubled by Attachments and 'Arrests made of their Bodies, as well by Process of *Latitat*, '*Alias*, and *Pluries capias*, sued out of the Court commonly 'called the King's Bench, as also by Plaint, Bill or other Suit 'in the Court commonly called the Marshalsea, and within the 'City of *London*, and other Cities, Towns Corporate, and 'Places where any Liberty or Privilege is to hold Pleas of 'Debt, Trespass, and other personal Actions and Suits: And 'when the Parties that be arrested or attached are brought 'forth to answer to such Actions and Suits as should be objected against them, then many Times there is no Declaration or 'Matter laid against the Parties so arrested or attached, whereunto they may make any Answer; and so the Party arrested is 'very maliciously put to great Charges and Expences, without 'any just or reasonable Cause: And yet nevertheless hitherto, by 'Order of the Law, the Party so grieved and vexed could 'never have any Costs or Damages to him to be judged or 'awarded for the said unjust Vexation and Trouble:'

The Inconvenience of pursuing of Suits upon Malice, without just Cause.

II. For Remedy whereof, Be it enacted and ordained by the Authority of this present Parliament, That when and as often as any Person and Persons, after the first Day of *January* next coming shall sue forth, or by any Means cause or procure to be sued forth, of the said Court commonly called the King's Bench, any of the Writs or Process before mentioned, against any Person or Persons which upon the same

No. 4. 8 Elizabeth, c. 2.

Writ or Writs shall happen to be arrested, or which shall appear upon the Return of any of the said Writs or Process, and shall put in his or their Bail or Bails to answer such Suit as shall be objected against him, according to the common Order of the Court; that then in every such Case, if the Party or Parties at whose Suit, Means or Procurement, the same Writ, Writs or Process was obtained or sued forth, do not within three Days next after such Bail had and taken, put into the same Court his or their Declaration against the same Party or Parties against whom such Writ or Process hath been or shall be sued; Or if after Declaration had and put into the same Court, the Plaintiff in such Case shall not prosecute the same with Effect, but shall willingly and apparently to the same Court suffer his or their said Suit to be delayed; or shall after Declaration so had, suffer the same Suit to be discontinued, or otherwise shall be nonsuit in the same; that then in every such Case, the Judges of the said Court for the Time being shall by their Discretions from Time to Time, as they shall see or perceive any such Default to be in the Party or Parties at whose Suit, Means or Procurement such Writ or Process was sued forth, award and judge to every such Person and Persons so arrested, vexed, molested or troubled by such Writs or Suit, his and their Costs, Damages and Charges by any Means sustained by Occasion of any such Writs, Process, Arrests or Suits, taken, sued or had against him, to be paid by such Person or Persons that so doth or shall cause or procure any such Writs or Process to be sued forth, as is aforesaid.

Costs, Damages and Charges shall be awarded, where the Plaintiff doth delay his Suit, doth discontinue, or is nonsuit, in the King's Bench.

III. And be it further enacted by the Authority aforesaid, That if any Person or Persons shall after the said first Day of *January* cause or procure any other Person or Persons to be attached or arrested to answer to any Bill, Plaint, Action or Suit, in the said Court of the Marshalsea, or in any Court within the said City of *London*, or in any City, Borough, Town Corporate or other Place or Places, where any Liberty or Privilege is used to hold Plea in any Action or Actions personal, and do not, in all Courts having their Continuance *de die in diem*, within three Days next after such Time as the Party Defendant or Defendants shall be bailed, or otherwise appear in Court, by Force of any Arrest or Attachment had and returned, and in all other Courts, at the next Sessions or Court to be holden after such Arrests or Attachments, and Appearance of the Party Defendant or Defendants, whereas the said Party Defendant or Defendants shall be compelled or ought to appear, (unless a further Day shall be specially given by the Discretion of the Court from whence any Precept, Process or Attachment shall be awarded) put and exhibit his Bill or Declaration against such Person or Persons, as so by his Suit and Means shall be attached or arrested, into such Court where the Party by such Attachment or Arrest is compelled or ought to appear: Or if any such Person or Persons, at whose Suit or Means any such Attachment or Arrest of any Person or Persons shall be so had and

A Remedy if the Plaintiff do delay, discontinue, or is nonsuit in the Marshalsea, or any City or Town Corporate.

No. 4.
8 Elizabeth, c. 2.

made, after his Declaration, Bill or Plaint exhibited, do not from thenceforth prosecute the same his Suit with Effect or shall suffer the same to be discontinued, or shall after be nonsuit in the same, or willingly and apparently to the same Court, shall for Vexation of the Defendant in such Suit delay the same Suit: That then in every such Case the Judge or Judges of every such Court before whom any Person or Persons shall be so sued, molested or troubled by Occasion or Mean of such Attachment or Arrest, or by such Suit or Suits, shall forthwith by his or their Discretion from Time to Time, as he or they shall see or perceive any such Default or Delay in the Party that caused or procured any such Attachment or Arrest to be had, award and judge to every such Person or Persons, which after the said first Day of *January* shall be so attached, arrested, molested, vexed or troubled, his Costs, Damages and Charges, by any Means sustained by Occasion of any such Attachment, Arrest or Suit, so had and taken against him, to be paid by such Person or Persons that so doth or shall cause or procure any such Attachment or Arrest to be so had or made,

The Penalty for arresting of any Person at the Suit of another not knowing thereof.

IV. And if any Person or Persons at any Time after the said first Day of *January* shall, by any Way or Mean, maliciously, or for Vexation and Trouble, cause or procure any other Person or Persons to be arrested, or attached to answer in any the Courts or Places aforesaid, at the Suit or in the Name of any Person or Persons, where indeed there is no such Person or Persons known, or without the Assent, Consent or Agreement of such Person or Persons, at whose Suit or in whose Name such Arrest or Attachment is or shall be so had or procured, that then every such Person or Persons, that shall so cause or procure any such Arrest or Attachment of any other Person or Persons to be had or made for Vexation or Trouble, as is aforesaid, and shall thereof be convicted or lawfully accused by Indictment, Presentment, or by the Testimony of two sufficient Witnesses or more, or other due Proof, shall for every such Offence by him or them committed, done or procured, have and suffer Imprisonment of his or their Body or Bodies by the Space of six Months, without Bail or Mainprize: And before he or they shall be delivered out of Prison, shall pay unto the Party or Parties so arrested or attached by his or their Means or Procurement, treble the Costs, Charges, Damages and Expences that he or they shall be put unto by Reason or Occasion of such Arrest or Attachment so had; and shall also forfeit and pay unto such Person or Persons, in whose Name or at whose Suit he or they shall so procure such Arrest or Attachment to be had or made, if then there shall be any such Person known, the Sum of ten Pounds for every such Offence.

A Remedy to recover the Costs and Damages awarded.

V. And be it further enacted by the Authority aforesaid, That every Person and Persons to whom any Costs, Charges, Damages, Forfeiture or Payment of any Sum or Sums of Money by Authority of this Act shall be awarded, judged or forfeited, shall and may at all Times hereafter have his or their Remedy for the Recovery thereof, by Action of Debt, Bill or

Plaint, in any Court of Record against such Person or Persons, their Heirs, Executors, or Administrators, as should or ought to pay the same by Virtue or Force of this Act; in which Action, Bill or Plaint, no Essoin, Protection, or Wager of Law shall be admitted or allowed to any the Defendant or Defendants in the same.

No. 4.
8 Elizabeth, c. 2.

## No. 5.

43 Elizabeth, c. 6. — An Act to avoid trifling and frivolous Suits in Law in her Majesty's Courts in *Westminster.*

No. 5.
43 Elizabeth, c. 6.

'FOR avoiding the infinite Number of small and trifling 'Suits commenced or prosecuted against sundry her 'Majesty's good and loving Subjects in her Highness Courts at '*Westminster*, (which by the due Course of the Laws of this 'Realm ought to be determined in inferior Courts in the Country) to the intolerable Vexation and Charge of her Highness 'Subjects;' Be it enacted by the Authority of this present Parliament, If any Sheriff, Undersheriff or other Person, having Authority or taking upon him to break Writs after forty Days next after the End of this Session of Parliament, do make any Warrant for the Summons of any Person, as upon any Writ, Process or Suit, or for the Arresting or Attaching of any Person or Persons by his or their Body or Goods, to appear in any her Majesty's Courts at *Westminster*, or elsewhere (not having before that the original Writ or Process warranting the same), That then upon Complaint thereof made to the Justices of Assize of the County where the same Offence shall be committed, or to the Judges of the Court out of which the Process issued, not only the Party that made such Warrant, but all those that were the Procurers thereof, shall be sent for before the same Judges or Justices, by Attachments or otherwise, as the same Judges or Justices shall think good and allow of, and be examined thereof upon their Oaths; And if the same Offence be confessed by the same Offenders, or proved by sufficient Witnesses, to the Satisfaction of the same Judges or Justices, That then the same Judges or Justices that shall so examine the same, shall forthwith by Force of this Act commit every the same Offenders to the Gaol of the County or Court where the same shall be examined; there to remain without Bail or Mainprise until such Time as they amongst them have fully satisfied and paid unto the Party grieved by such Warrant, not only the Sum of ten Pounds of lawful *English* Money, but also all such Costs and Damages as the same Judges or Justices shall set down, that the same Party hath sustained thereby, and withal, twenty Pounds a-piece for their Offence to her Majesty.

Penalty of a Sheriff, &c. arresting or summoning without Warrant.

Summoning or arresting without Warrant.

II. And be it further enacted by the Authority aforesaid, If upon any Action Personal to be brought in any her Majesty's Courts at *Westminster*, not being for any Title or Interest of Lands, nor concerning the Freehold or Inheritance of

No Costs shall be awarded in a personal Action brought for a Sum not amounting to 40s.

No. 5.
43 Elizabeth, c. 6.

any Lands, nor for any Battery, it shall appear to the Judges for the same Court, and so signified or set down by the Justices before whom the same shall be tried, that the Debt or Damages to be recovered therein in the same Court shall not amount to the Sum of forty Shillings or above, That in every such Case the Judges and Justices before whom any such Action shall be pursued, shall not award for Costs to the Party Plaintiff any greater or more Costs than the Sum of the Debt or Damages so recovered shall amount unto, but less at their Discretions. This Act to endure to the End of the first Session of the next Parliament. [3 Car. 1. c. 4. continued until the End of the first Session of the next Parliament, and farther continued by 16 Car. 1. c. 4.] (1.)

This Clause extended to the Counties Palatine by 11 & 12 W. 3. c. 9.

(1.) By Stat. 11 and 12 W. III. c. 9, s. 1, this Provision is extended to the Counties Palatine, and Wales.—This Act does not deprive a Plaintiff of full Costs, unless there is a Certificate from the Judge. The first Instance of such Certificate was in White *v.* Smith, 17 Geo. II., cited 2 Str. 1232; 1 Wils. 94. In that Case the Action was for taking away Sand on Hounslow Heath, and Willes C. J. having certified that the Damages found (being under 40s.) were the real Damages to be recovered, it was ruled to be a Case within the Act, and not within the Exception of Actions for any Title or Interest in Land. The Act extends to an Action for disturbing a Way or Common, which may be against a mere wrong Doer, without any Question of Right; Edmondson *v.* Edmondson, 8 E. 294; Kyleman *v.* Patrick, 1 Freum. 214: to Trespass, where the Defendant justified for a Distress for Rent, under the Authority of the Landlord, and the Issue was on the Authority which is collateral to the Right; Howard *v.* Cheshire, Sayer Rep. 250.

The Act also extends to Trespass for assaulting the Plaintiff, stopping his Waggon, and taking away his Cart Rope; the Defendant having justified taking the Rope for Toll, after Demand and Refusal, and the Issue being on the Demand and Refusal; Walker *v.* Robinson, 1 Wils. 93; 2 Str. 1232: to Assault, Battery, and false Imprisonment, there being no Certificate of actual Battery to take the Case out of 22 and 23 Chas. II. in Favour of the Plaintiff; Emmett *v.* Lyne, 1 N. R. 255; Wiffin *v.* Kinneard, 2 N. R. 471: to Assumpsit, where, upon Plea of Tender, the Plaintiff has recovered more than the Sum tendered; Bartlett *v.* Robins, 2 Wils. 258: to Trespass vi & armis, for beating a Dog; Dand *v.* Sexton, 3 T. R. 37; (in that Case it was contended, that the Statute did not extend to Actions which could not be brought in Inferior Courts): to Actions on Statutes giving the Plaintiff Damages with Costs of Suit; Williams *v.* Miller, 1 Taunt. 400.

If the Defendant pleads the General Plea, and several Special Pleas; upon general Verdict for the Plaintiff and Judge certifies, the Plaintiff is not entitled to Costs of the special Pleas under 4 Ann, c. 16, s. 5, [ante. P. II. Cl. I. No. 23]; Howard *v.* Cheshire, Say. Rep. 260; Richmond *v.* Johnson, 7 E. 583.

The Certificate may be granted any Time after the Trial; Holland *v.* Gore, Sayer, Costs, 18, cited 3 T. R. 38 n.

## No. 6.

## 4 James I. c. 3.—An Act to give Costs to the Defendant upon a Nonsuit of the Plaintiff, or Verdict against him.*

No. 6.
4 James I. c. 3.

'WHEREAS in the three and twentieth Year of the Reign 'of King *Henry* the Eighth, of famous Memory, a 'good and profitable Law was made, whereby it was enacted, 'That in Cases where the Plaintiff in any Action, Bill or

* See Hullock, c. 2. sect. 1.

' Plaint of Debt, Trespass upon the Case, Detinue, Account, ' and in some other Actions therein especially mentioned, ' should become nonsuit, or a Verdict should be had against the ' said Plaintiff; that then in such Cases the Defendant should ' have Judgment to recover his Costs against every such ' Plaintiff, as by the said Law appeareth: Which Law hath ' been found to be very good and beneficial for the Common- ' wealth, and thereby many have been discouraged from ' bringing frivolous and unjust Suits, because such Parties are ' to make Recompence to the Parties unjustly vexed, for the ' said unjust Vexations.

No. 6. 4. James I. c. 3.

Cases wherein by the Statute made 23 H. 8. c. 15. the Defendant shall recover his Costs.

' II. And forasmuch as Actions of Trespass, and Actions ' of *Ejectione firmæ*, and many other Actions Real and Personal ' are within the same Mischief, as the said other Actions were ' at the Common Law, and yet were omitted out of the Provi- ' sion of the said Law:' For Remedy whereof, Be it enacted by the King's most Excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons any Time after the End of this present Session of Parliament, shall commence or sue in any Court of Record, or in any other Court, any Action, Bill or Plaint of Trespass, or *Ejectione firmæ*, or any other Action whatsoever, wherein the Plaintiff or Demandant might have Costs (if in case Judgment should be given for him) and the Plaintiff or Plaintiffs, Demandant or Demandants, in any such Action, Bill or Plaint, after Appearance of the Defendant or Defendants, be nonsuited, or that any Verdict happen to pass by any lawful Trial against the Plaintiff or Plaintiffs, Demandant or Demandants, in any such Action, Bill or Plaint, that then the Defendant and Defendants, in every such Action, Bill or Plaint, shall have Judgment to recover his Costs against every such Plaintiff and Plaintiffs, Demandant and Demandants, to be assessed, taxed and levied in Manner and Form as Costs in the said recited Actions are to be assessed, taxed and levied in and by the said Law of the three and twentieth Year of King *Henry* the Eighth. Coke Ent. 29.

Several Cases wherein the Defendant shall recover his Costs against the Plaintiff.

## No. 7.

### 22 and 23 Charles II. c. 9. — An Act for laying Impositions on Proceedings at Law. P.

CXXXVI. AND for Prevention of trivial and vexatious Suits in Law, whereby many good Subjects of this Realm have been and are daily undone, contrary to the Intention of an Act made in the three and fortieth Year of Queen *Elizabeth*, for avoiding of infinite Numbers of small and trifling Suits commenced in the Courts at *Westminster*; be it further enacted, for making the said Law effectual, That from and after the first of *May* aforesaid, in all Actions of

No. 7. 22 and 23 Chas. II. c. 9.

No. 7. 22 and 23 Chas. II. c. 9. Trespass, Assault and Battery, and other Personal Actions,(1.) wherein the Judge at the Trial of the Cause shall not find and certify under his Hand upon the Back of the Record, that an

(1.) Hullock, c. 1. sect. 3.

This Act would seem in its Purview to be sufficiently general to comprehend Actions of every Description, and not to be confined to the particular Actions of Assault and Battery, and Trespass *Quare clausum fregit*, upon which, in particular Cases, Certificates to intitle the Plaintiff to full Costs, are authorized by a subsequent Part of the Clause. And as a Matter of Reasoning, it is very difficult to admit that the Operation of a general Provision shall be restrained, because an Exception is introduced which can only apply to some particular Part of the Subject within the Scope of such Provision. The Propriety of such a restrictive Construction is jointly questioned by Willes, C. J. in Milburne *v.* Read, 3 Wils. 325; and in the Works of Sergeant Hullock: but the opposite Doctrine has been long completely established. The Doctrine, that where there is a special Plea of Justification the Plaintiff shall be intitled to full Costs without Certificate, however firmly settled, seems also to be contrary to the Intention and true Construction of the Act; as even in the excepted Cases the Action itself may be very frivolous, and the most effectual Way of preventing Suits of that Description, is to subject the Costs to the Discretion of the Judge. In Cases of Assault, a Person who has a reasonable Probability of establishing a Justification is prevented from making the Attempt by the Hazard of Liability to full Costs in Case of Failure; and I apprehend, that it would not be beneath the Attention of the Legislature to provide that full Costs should not be allowed in Actions of Assault and Battery without a Judge's Certificate, notwithstanding any special Plea of Justification.

The following Note as to the Actions in which the Statute is or is not applied, was subjoined by the Editor to the Case of Ven *v.* Phillips, 1 Salk. 207, in which it was ruled, that the Plaintiff was intitled to full Costs in an Action for taking, driving and wounding Sheep.—The Additions are, as in other Instances of Quotations from the Editor's former Publications, denoted by Brackets.

"According to the Construction which has, by an uniform Train of Decisions, been applied to the Statute 22 and 23 Cha. II. c. 9. the Doctrine of this Case (viz. that the Plaintiff is by that Statute deprived of full Costs where the Damages recovered are under 40s., in those Actions only wherein a Certificate of an actual Battery, or the Title of the Land coming in Question, can be given) is fully established. The principal Questions relative to this Subject must arise where the Injury complained of is of a mixed Nature; or distinct Injuries are complained of in the same Declaration, on some of which such Certificate can be granted, and on others not. The material Distinction seems to be, that where the Complaint that would alone carry Costs, is a material and substantial Part of the Case, and upon Establishment of which the Plaintiff is entitled to a Verdict, he is not excluded from full Costs by its being joined with a Complaint for an Assault or Trespass. But where it is only a collateral Circumstance, a Matter of Aggravation or a Mode of committing the other Injury, the Costs will be no more than the Damages. Thus, full Costs are given in an Action for breaking the Plaintiff's Close, and *impounding his Cattle;* Barnes *v.* Edgard, 3 Mod. 39. So where one Count was for a Trespass on Land, and another for *carrying away a Hog;* Knightly *v.* Buxton, Sayer on *Costs*, 39: for a Trespass in a House, and *consuming Victuals;* Smith *v.* Clarke, 2 Str. 1130: for entering the Plaintiff's Close and cutting his Cable, *whereby the Plaintiff lost the Use of his Boat;* Haines *v.* Hughes, Comb. 324: entering his Close, and *driving his Sheep or Bull;* Arnold *v.* Thompson, Barnes, 119; Thompson *v.* Berry, 1 Str. 551: bringing diseased Cattle into the Plaintiff's Close, *whereby the Plaintiff's Cattle were infected;* Anderson *v.* Buckton, 1 Str. 192: in Trespass and Assault for *Criminal Conversation;* Batchelor *v.* Bigg, 2 Bl. 854; 3 Wils. 319: Assault and *false Imprisonment;* 1 Bac. Ab. 515; [for beating a Servant *per quod servitium amisit;* Peak *v.* ——, 3 Keb. 184]; Assault and Battery, and treading upon and *spoiling* the Plaintiff's *Oats*, and *spoiling his Standard and Roller;* Milbourne *v.* Read, Barnes 134, cited 3 Wils. 322. Where a double Injury is charged, as in the preced-

Assault and Battery was sufficiently proved by the Plaintiff against the Defendant, (2.) or that the Freehold or Title of the Land mentioned in the Plaintiff's Declaration was chiefly in Question, (3.) the Plaintiff in such Action, in case the Jury shall find the Damages to be under the Value of forty Shillings, shall not recover or obtain more Costs of Suit than the Damages so found shall amount unto: And if any more Costs in any

No 7. 22 and 23 Chas. II. c. 9.

Extended to Counties Palatine by 11 & 12 W. 3. c. 9.

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ing Cases, the Jury may find for the Plaintiff as to the Assault or Trespass, and for the Defendant as to the other Cause of Action, in which Cases there are no more Costs than Damages; Gilb. Eq. Rep. 199; 1 Bac. Ab. 514; in marg. Hullock, 84, note; Beck *v.* Nichols, 1 Str. 577; Cotterill *v.* Jolly, 1 T. R. 655: or where there is no Evidence of such other Cause, a general Verdict will be amended by the Judge's Notes; Bac. and Hullock, ubi supra. In the following Cases it has been held that the Plaintiff is not intitled to full Costs: Assaulting the Plaintiff and *disturbing* him in his quiet *Possession*, &c.; Boiture *v.* Woolrick, 1 Ld. Raym. 566: assaulting the Plaintiff, and *striking his Horse*, by which he was lessened in Value; 1 Str. 624; [Banister *v.* Fisher, 1 Taunt. 357;] breaking the Plaintiff's House, and keeping *him out of Possession*, whereby he was put to great Expence, and lost the Use of it; Blunt *v.* Milher, 1 Str. 645: [throwing Stones against the Plaintiff's Windows, and breaking the Glass; Adlem *v.* Grinaway, 6 T. R. 281: pulling down, *burning and consuming* by Fire the Plaintiff's Fence, there being a Justification found for the Defendant as to the pulling down; Stead *v.* Gamble, 7 E. 325:] breaking the House, *making a Noise, and continuing* in it *until the Plaintiff was obliged to give* the Defendant a Promissory Note; Appleton *v.* Smith, 3 Bur. 1282: [in an Action for Mesne Profits; Doe *v.* Davies, 6 T. R. 593.] The Asportation of personal Property entitles the Plaintiff to full Costs, though complained of in the same Declaration as a Trespass; but no more Costs than Damages were allowed for digging Peat, &c. and carrying away the same, the Asportation being only a Mode and Qualification of the Injury to the Land; Clegg *v.* Molineux, Doug. 780. Many Cases have arisen where the Plaintiff complained of an Assault on his Person, and also an Injury to his Clothes; but it seems now to be fully settled, that where the Injury to the Clothes is a Consequence of the Assault, or Part of the same Transaction, it will not intitle the Plaintiff to more Costs than Damages; Mears *v.* Greenaway, 1 Hen. Bl. 295; [R. accordingly, although the Tearing of the Clothes was charged as a substantive Fact; Lockwood *v.* Stannard, 6 T. R. 482.] The Doctrine upon this Subject is very clearly stated in the Case of Batchelor *v.* Bigg. 3 Wils. 319: vide also Mr. Hullock's Treatise on the Law of Costs, where the Subject is fully and ably considered, and from which the foregoing Cases have been extracted.

It should be observed, that in those Cases where the Plaintiff is not deprived of full Costs by the Stat. of Chas. II. his Right to them may be prevented by a Judge's Certificate under 43 Eliz. c. 6."

(2.) If the Defendant pleads a Justification of *Son Assault Demesne* to [illegible]

2 Keb. 93: a Plea that the Plaintiff and Defendant were at a Parish Meeting, when the Defendant made a great Disturbance, and the Plaintiff required the Defendant to desist, who refused, whereupon the Plaintiff *molliter manus imposuit* to turn him out; Smith *v.* Edge, 6 T. R. 562. Secus, if the Justification is to the *Assault only*, independently of the Battery; Page *v.* Creed, 3 T. R. 391; Brennan *v.* Redmond, 1 Taunt. 16.

(3.) No Certificate is requisite where it appears by the Pleadings that the Title was in Question; as upon Plea of right Way and Replication, *extra viam;* Asser *v.* Finch, 2 Lev. 234, and other Cases cited Hullock; Martin *v.* Vallance, 1 E. 350. Secus, where the Right of Way was pleaded by Metes and Bounds; Cockerill *v.* Allanson, B. R. 22 G. III. (Hullock 76). The Defendant pleaded two Pleas of Justification; the Plaintiff replied, by Way of New Assignment, that the Trespasses were committed on other Days, and on other Occasions, and recovered a Verdict under 40s. Ruled, that he was

No. 7. such Action shall be awarded, the Judgment shall be void,
22 and 23 Chas. II. c. 9. and the Defendant is hereby acquitted of and from the same, and may have his Action against the Plaintiff for such vexatious Suit, and recover his Damages and Costs of such his Suit in any of the said Courts of Record.

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intitled to the Costs of all the Pleadings; Gundry *v.* Sturt, 1 T. R. 636. In Hudson *v.* Browne, Barnes, 124, Lloyd *v.* Day, id. 149, the Defendant having pleaded a Justification, and the Plaintiff new Assignment, and recovered under 40s., it was ruled that he was intitled to no more Costs than Damages. In the first Case the Court said, "Here is no special Pleading; the new Assignment is only to ascertain the Plea." In the second, that "the Plea of Not Guilty, being to the new Assignment, makes no Difference." I cannot discover on what Ground Gundry *v.* Sturt was decided, except the Intimation of the Master, that it had been the Practice to allow Costs in such Cases; or why a Defendant, who had committed two Trespasses, one qualified and justifiable, the other not so, should be subject to greater Liability for the latter, than if the former had not taken place. And in Gregory *v.* Ormerod, 4 Taunt. 98, of which I was not aware at the Time of making the preceding Observation, it was held, conformably to the Authority of Cockerill *v.* Allanson, that when the Defendant justified under a *Fi. Fa.*, and the Plaintiff now assigned other Trespasses, committed after the Return, he was not intitled to more Costs than Damages; and Mansfield C. J., said, "It is monstrous Thing that where a Plaintiff has been wholly in the wrong in bringing an Action for a Trespass, which is fully qualified by a Right of Way, or other Right, he therefore shall have full Costs, because he brings another Action for another little trifling Trespass, which he may happen to be able to prove."

In Redridge *v.* Palmer, 2 H. B. 2, the Defendant pleaded a License, and the Plaintiff having obtained a Verdict for 1s., the Court held that he was intitled to full Costs, upon the Ground that the Rule which had long prevailed in both Courts, that when there was a special Plea of Justification the Plaintiff was entitled to full Costs, ought not to be disturbed. So in Comer *v.* Baker, 2 H. B. 341, where the Defendant pleaded, 1. the General Issue; 2. Disclaimer of Title, and Tender of Amends; 3. Distress, Damage Feasant, for the same Trespass; 4. Escape of Cattle for Defect of Fences; 5. License. The Court said, that if it had been a new Case, they should have thought that the Argument of the Defendant on the Construction of the Statute ought to be adopted. But that as a different Practice had prevailed, and was confirmed by Redridge *v.* Palmer, which was decided upon great Consideration, they did not think it right to depart from it. This is clearly one of the Cases in which a Practice admitted to be erroneous, might have been corrected without Inconvenience. But the same Point was decided upon a Plea of License, in Paddle *v.* Kiddle, 7 T. R. 659. Lord Kenyon, referring to the preceding Cases, says, "The Principle on which those Determinations were founded is, that when the Case is such, that the Judge who tries it cannot, in any View of it, grant a Certificate within the Act, it is decided to be a Case out of the Statute. Here was a Plea of License, upon which the Question could not arise, whether or not the Defendant had a Title to the Land; the Question was, whether or not he had Liberty to go over the Land; therefore the Case was not within the Statute." He further adverted to its being a dangerous Innovation to disturb such a settled Point. It would, I apprehend, be very difficult to find any Thing more unsatisfactory, in Point of Reasoning, than the Ground of Decision which has been just cited. The Statute restrains the Allowance of Costs, unless the Judge certifies that the Title did come in Question. The Courts say, that the Exception confines the Rule to *Actions*, wherein the Title could come in Question. It is further settled, that the Certificate shall not be required, where, by the Pleading, it appears that the Title did come in Question; and this is followed up by the Doctrine that in Actions where the Title might come in Question, and therefore within the Purview of the Act, an Exception intended to protect Cases where the Title actually did come in Question, shall be further extended by Construction, upon the especial Ground, that, according to the Matter pleaded, by no Possibility it could come in Question.

It was formerly held, that no Certificate was necessary, where there had been a View before Trial: but since the Stat. 4 Ann. c. 16, the Practice has been to grant a View of Course, and full Costs are not allowed on Account of such View, although granted at the Instance of the Defendant; Flint *v.* Hill, 11 E. 184 Possibly, the very Object of requiring the View, may be to shew the Insignificance of the Damage sustained. Where a Cause is referred to Arbitration, and by the Rule of Reference the Costs are *to abide the Event*, the Finding of the Arbitrator is not equivalent to a Certificate of the Judge.

## No. 8.

### 8 and 9 William III. c. 11.—An Act for the better preventing frivolous and vexatious Suits.

No. 8. 8 and 9 William III. c. 11.

FOR Relief of His Majesty's good Subjects against causeless and unjust Suits, and for the better enabling them to recover their just Rights, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the five and twentieth day of March, which shall be in the Year of our Lord One thousand six hundred ninety and seven, where several Persons shall be made Defendants to any Action or Plaint of Trespass, (1.) Assault, false Imprisonment, or *Ejectione Firmæ*, and any one or more of them shall be upon the Trial thereof acquitted by Verdict, every Person or Persons so acquitted shall have and recover his Costs of Suit, in like Manner as if a Verdict had been given against the Plaintiff or Plaintiffs, and acquitted all the Defendants; unless the Judge, before whom such Cause shall be tried, shall immediately after the Trial thereof, in open Court, certify upon the Record under his Hand, that there was a reasonable Cause for the making such Person or Persons a Defendant or Defendants to such Action or Plaint.

Where several Persons are Defendants to any Action, &c.

'II. And forasmuch as for Want of a sufficient Provision 'by Law for the Payment of Costs of Suit, divers evil dispo'sed Persons are encouraged to bring frivolous and vexatious 'Actions, and others to neglect the due Payment of their 'Debts;' be it further enacted by the Authority aforesaid, That if at any Time from and after the said five and twentieth Day of *March*, any Person or Persons shall commence or prosecute in any Court of Record, any Action, Plaint, or Suit, wherein upon any Demurrer, (2.) either by Plaintiff or

Defendant, on Judgement given for him, &c. to recover Costs.

(1.) See Hullock, c. 2. sec. 3.

This Provision does not extend to *Actions on the Case*; Dibben *v.* Cooke, 2 Str. 1005; Poole *v.* Boulton, Barnes, 139; Marriner *v.* Barrett, cited 3 Bur. 1285; Replevin, Ingle *v.* Wardsworth, 3 Bur. 1284; 1 Bl. 365. *Debt against Executors*, one of whom had a Verdict on *plene administravit*; D. of Norfolk *v.* Anthony, 2 Tidd's Prac. 4 Ed. 890. When the Defendant pleaded jointly, the Costs allowed to the Defendant on Acquittal are only 40s.; Hughes *v.* Clubb, 2 M. and S. 174. Qu. ibid. if they had pleaded separately?

(2.) See Hullock, c. 2. sec. 4.—This Clause only extends to Demurrer on the Merits, and not to a Judgment *quod Billa cassetur* upon Plea in Abatement; Thomas *v.* Lloyd, 1 Salk. 194; confirmed by several subsequent

No. 8. 8 and 9 William III. c. 11.

Defendant, Demandant or Tenant, Judgement shall be given by the Court against such Plaintiff or Demandant, or if at any Time after Judgement given for the Defendant in any such Action, Plaint, or Suit, the Plaintiff (3.) or Demandant shall sue any Writ or Writs of Error to annul the said Judgement, and the said Judgement shall be afterwards affirmed to be good, or the said Writ of Error shall be discontinued, or the Plaintiff shall be nonsuit therein, the Defendant or Tenant in every such Action, Plaint, Suit, or Writ of Error, shall have Judgement to recover his Costs against every such Plaintiff or Plaintiffs, Demandant or Demandants, and have Execution for the same by *Capias ad satisfaciendum, Fieri facias,* or *Elegit.*

Plaintiff obtaining Judgement on an Action of Waste, &c. to recover Costs.

III. And be it further enacted by the Authority aforesaid, That from and after the said five and twentieth Day of *March,* in all Actions of Waste (4.) and Actions of Debt upon the Statute, for not setting forth of Tithes, wherein the single Value or Damage found by the Jury (5.) shall not exceed the Sum of twenty Nobles, and in all Suits upon any Writ or Writs of *Scire facias,* (6.) and Suits upon Prohibitions,

Cases: nor to give Costs where the Plaintiff would not have been intitled to Costs upon a Verdict as in Formedon; Miller *v.* Seagrave, Cas. of Prac. in C. B. 25. So in *Quare Impedit;* Thrale *v.* B. of London, 1 H. B. 530. Upon Pleas of the General Issue and Statute of Limitations, the Plaintiff took Issue on the first, and demurred to the second; the Issue was found for the Plaintiff, and afterwards the Demurrer adjudged for the Defendant. R. that the Defendant should have Costs on the Demurrer, and no Costs be allowed on the Issue; Cooke *v.* Sager, 2 Bur. 713. It had been previously holden in the Common Pleas, (Yates *v.* Green, Barnes, 141,) that in such Case the Plaintiff should have the Costs of the Issue, and the lesser Costs be deducted from the greater; Yates *v.* Green, Barnes, 141. Upon a Declaration of two Counts, Demurrer to one found for the Defendant, and Issue on the other, found for the Plaintiff; ruled, that the Defendant should not have Costs of the Demurrer; Astley *v.* Young, 2 Bur. 1233; which was admitted to be a settled Law in Postan *v.* Stanway, 5 E. 161. By the several Authorities cited in that Case, it appears that a Plaintiff who has a clear and an experimental Right of Action against the same Defendant, has a great Advantage in suing on the latter without Risque of Costs.

(3.) Before this Statute, Costs in Error were only given in Favour of the Plaintiff in the original Suit. An Executor Plaintiff in the original Action is not liable to Costs in Error; Gale *v.* Till, Carth. 281; Comb. 228; 3 Lev. 375; Stra. 400. See Observations in the different Reports of this Case, Hullock, ch. 4. sec. 2. For Costs in Error generally, see Title *Error,* post.

(4.) Damages were recoverable at Common Law in Waste against Tenant by the Curtesy or in Dower, and the Statute of Gloucester giving treble Damages, the Plaintiff is in such Case intitled to treble Costs; but as no Damages could be recovered against Tenant for Life or Years before the Statute of Gloucester, they were only rendered liable to Costs by this Act; Hullock, c. 4. sec. 3.

(5.) Costs are not allowed under this Act upon Judgment by Default; Biddulph *v.* Cooper, cited 1 H. B. 108: nor upon Counts for treble Value, when after a Demurrer the Cause was referred to an Arbitrator, who found the single Value under 20 Nobles; but in that Case, Costs were allowed on the Count for single Value; Barnard *v.* Moss, 1 H. B. 107.

(6.) See Hullock, c. 4. sec. 5.—This only extends to *Scire facias* in Civil Suits, not to *Sci. fa.* to repeal a Patent; R. *v.* Miles, 7 T. R. 367; in Huer *v.* Whitbread, Cas. Prac. C. B. 74; Pool *v.* Broadfield, Barnes, 431; it was held that Costs could not be given against a Plaintiff applying to quash his own *Scire facias,* and it was ruled accordingly in Parklington *v.* Peck, 1 Str. 638, on the Plaintiff applying for Leave for that Purpose after Plea in

(7.) the Plaintiff obtaining Judgement, or any Award of Execution after Plea pleaded, or Demurrer joined therein, (8.) shall likewise recover his Costs of Suit; and if the Plaintiff shall become nonsuit, or suffer a Discontinuance, or a Verdict (9.) shall pass against him, the Defendant shall recover his Costs, and have Execution for the same in like Manner as aforesaid. No. 8. 8 and 9 William III. c. 11.

IV. And, for the preventing of wilful and malicious Trespasses, be it further enacted, That in all Actions of Trespass to be commenced or prosecuted, from and after the said five and twentieth Day of *March*, one thousand six hundred ninety and seven, in any of his Majesty's Courts of Record at *Westminster*, wherein at the Trial (10.) of the Cause it shall appear, and be certified by the Judge, under his Hand, upon the Back of the Record, that the Trespass upon which any Defendant shall be found Guilty, was wilful and malicious, the Plaintiff shall recover not only his Damages, but his full Costs of Suit; any former Law to the contrary notwithstanding. (11.) If Defendant be found guilty, Plaintiff to have Costs, &c.

Abatement; but the Court said, if there had been no Plea, that they would have made the Plaintiff pay the Costs. An Executor suing or sued in *Scire facias*, is exempt from Costs by sect. 5; Bellew v. Aylmer, 1 Str. 188.

(7.) See Hullock, c. 4. sect. 6.—For Costs in Prohibition, under Stat. 2 & 3 Edward VI. c. 13, see that Stat. post, Class 22. It is settled by several Cases cited in Hullock, ub. supr. that a Plaintiff having Judgment in Prohibition, is intitled to Costs from the first Suggestion. But a Defendant, in case of a nonsuit, is not intitled to Costs of opposing the Rule of a Prohibition; Carlisle *v.* Meyrick, Sayer on Costs, 137. If upon Demurrer to a Declaration on Prohibition, a Prohibition be awarded upon some Points and not on others, the Plaintiff is intitled to Costs; Middleton *v.* Croft, 2 Str. 1062; Andrew, 62. A Defendant is intitled to Costs if Part only of the Issue is found for him, whereupon a Consultation is awarded; Malton *v.* Acklam, Barnes, 138; Brymer *v.* Atkins, Tidd, 851. If the Jury find a Modus different from that alledged by the Plaintiff, the Defendant is intitled to Costs; Brock *v.* Richardson, 1 T. R. 427.

(8.) There are no Costs under this Provision in case of Judgment by Default, but if the Plaintiff have Damages on the Writ of Enquiry for the Contempt, in proceeding after the Delivery of the Writ of Prohibition, he may have Costs under the Statute of Gloucester: see Bettinson *v.* Hinchman, Cas. Pr. C. B. 20; Bettinson *v.* Savage, (come semble S. C.) Com. Rep. 335. Costs were given against the Defendant where he had forced the Plaintiff to declare, and afterwards pleaded a frivolous Plea; Seed *v.* Woolfenden, 2 Barnes, 148. But the Defendant may wave the Right of requiring the Plaintiff to declare in Prohibition, and in that Case Proceedings are stayed without Costs; Gregge *v.* Jones, 2 Str. 1148. There are no Costs against Executors either as Plaintiffs or Defendants in Prohibition: see Sect. 5 infra.; Scummull *v.* Wilkinson, 9 E. 202.

(9.) The Statute omits the Case of Costs to the Defendant upon Demurrer.

(10.) In Ford *v.* Parr, 2 Wils. 21, the Judge having certified out of Court, the Court said that the Certificate was void and contrary to the Statute, which enacts that it shall be made in open Court at the Trial. But in Harper *v.* Carr, 7 T. R. 448, it is said to have been determined in a preceding Case of Swinnerton *v.* Jervis, (mentioned 6 T. R. 12. (n.) but on a different Trial) that the Certificate might be out of Court.

(11.) In 3 Bl. Com. 214, it is said that every Trespass is wilful where the Defendant has Notice, and is especially forewarned not to come in the Land, as every Trespass is malicious where the Intent of the Defendant appears plainly to harrass and distress the Plaintiff. But no Authority is

No. 8.
8 and 9 William III. c. 11.
Law against Executors not to be altered.

V. Provided always, That nothing herein contained shall be construed to alter the Laws in being as to Executors or Administrators, (12.) in such Cases where they are not at present liable to the Payment of Costs of Suit.

[*For the Remainder of the Act, see the next Class.*]

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cited, and perhaps the learned Commentator, as to wilful Trespass, intended rather to state a general Rule than an universal Position. In Reynolds *v.* Edwards, 6 T. R. 11, it was held on the Authority of a preceding Case of Swinnerton *v.* Jervis, that the Judge was bound to certify in case of Trespass after Notice, although it appeared in Reynolds *v.* Edwards that the Defendant did not know that the Land was that of the Plaintiff, and wished to avoid trespassing contrary to a general Notice which had been given. But in Gorst *v.* Watkins, 3 E. 495, upon a Rule to shew Cause why the Judge should not certify, the Court held, that the Rule was improper, and that the Judge had a Discretion. It seems also in this Case to be the Opinion of the Court, that there should be some Evidence of Agency in the Person by whom the Notice is immediately given. But I should apprehend that this was in the Breast of the Judge, and that he is not bound to confine his Conclusion of the Act being wilful, to a particular Evidence of its being so.

(12.) See supra. n. 6 & 7.

# Part IV. Class XII.

## JUDGMENT and EXECUTION,
*And herein of* Statutes *and* Recognizances.

### No. 1.

Statutum de Mercatoribus, the Statute of Acton-Burnel, made Anno 11 Edw. I. and Anno Dom. 1283.

Ordaining the Statute-Merchant for Recovery of Debts.

*Ex Rot. in Turr.* Lond.

No. 1. 11 Edward I. c.

PUR ceo qe Marchaunz qi avaunt ces houres unt preste lur aver a diverse genz sunt cheuz en poverte per ceo qe il ni avent pas si redde ley purvew par la quele il poient lur dettes hastivement recoverir al jor asis de paye e par cele achesun sunt mult de Marchaunz sustretz de venir en ceste terre od lur Marchaundises a damages des Marchaunz e de tut le Reaume. Le Rei par lui e par sun conseil ad ordine e establi qe Marchaunt qi veut estre seur de sa dette face venir sun dettur devaunt le Meire de Lundres ou de Everwyk ou de Bristowe e devaunt le Meire e devaunt un Clerk qe le Rey a ceo atornera conoise la dette e le jor de la pae e seit la reconisaunce enroulee de la main le avaundit clerk qa serra conue. E estre ceo lavaundit clerk face de sa main le escrit de obligation al quel es-

" FORASMUCH as Merchants, which heretofore have lent their Goods " to divers Persons, be greatly " impoverished, because there " is no speedy Law provided " for them to have Recovery " of their Debts at the Day of " Payment assigned; and by " reason hereof many Merchants have withdrawn to " come into this Realm with " their Merchandizes, to the " Damage as well of the Merchants, as of the whole " Realm;" ' the King by himself and by his Council hath ' ordained and established, ' that the Merchant which will ' be sure of his Debt, shall ' cause his Debtor to come ' before the Mayor of *London*, ' or of *York*, or *Bristol*, or ' before the Mayor and a Clerk ' (which the King shall appoint for the same) for to ' knowledge the Debt and the ' Day of Payment; and the

No. 1.
11 Edward I. c. 1.

Ackowledging of a Statute-Merchant.

The Seal of the Statute.

'Recognisance shall be entered into a Roll with the 'Hand of the said Clerk, 'which shall be known. Moreover, the said Clerk shall 'make with his own Hand a 'Bill obligatory, whereunto 'the Seal of the Debtor shall 'be put, with the King's Seal, 'that shall be provided for the 'same Purpose, the which 'Seal shall remain in the keeping of the Mayor and Clerk 'aforesaid: And if the Debtor 'doth not pay at the Day to 'him limited, the Creditor 'may come before the said 'Mayor and Clerk with his 'Bill obligatory; and if it be 'found by the Roll, and by 'the Bill, that the Debt was 'knowledged, and that the 'Day of Payment is expired, 'the Mayor shall incontinent 'cause the Moveables of the 'Debtor to be sold, as far as 'the Debt doth amount, by 'the praising of honest Men, 'as Chattels, Burgages deviseable, until the whole Sum of 'the Debt; and the Money, 'without Delay, shall be paid 'to the Creditor. And if the 'Mayor can find no Buyer, he 'shall cause the Moveables to 'be delivered to the Creditor at 'a reasonable Price, as much 'as doth amount to the Sum of 'the Debt, in Allowance of 'his Debt; and the King's 'Seal shall be put unto the 'Sale and Deliverance of the 'Burgages deviseable for a 'perpetual Witness. And if 'the Debtor have no Moveables within the Jurisdiction 'of the Mayor, whereupon the 'Debt may be levied, but hath 'some other-where within the 'Realm, then shall the Mayor 'send the Recognisance made

*Ex Rot. in Turr.* Lond.

crit seit mis le seal del detter od le seal le Rei qe a ceo est purveu le quel seal demoera en sauve garde le Meire e del clerk avaundit. E si le dettur nene rende al jor qe lui est asis si veigne le creaunzur al Meire e al clerk od sa lettre de obligatiun e si trove seit par roule e par lettre qe la dette fu conue e qe le jor asis seit passe le Meire par vewe de prodes homes meintenaunt face vendre les moebles ol dettur cum ateint de la dette si com chatels e burgagee devisables desqes a la summe de la dette e les deniers sauuz delai paez as creaunzur. E si le Meire ne troesse achatur face par renable pris liverer les moebles al creaunzur desqe a la summe de la dette en allowaunce de sa dette. E a la vente e a le liveree des burgages devisablis serra mis le seal le Rei avaundit en pardurable tesmoinaunce. E si le dettur ne eit moeble en le poer le Meire dunt la dette poet estree levee einz eit aillours en le reaume dunqe maunde le Meire desuz le seal avaundit a Chauncelier la conoissaunce fete devaunt lui e le avauntdit clerk e le Chauncelier envoye bref al viscunte in qi bailie le dettur avera moebles e le viscunte face fere gre al creaunzer par mesme la forme qe est devisee qe le Meire le fereit si les biens moebles al dettur fussent en sun poer. Mes bien se gardent ceuls qi priserunt les moebles pur liverer al creaunzur qe il mettent resnable pris e owel qe si il les prisent trop haut en favour del dettour e en damage del creaunzur la chosee prisee seit liveree a cels qi la averunt prisee par le

*Ex Rot. in Turr.* Lond.

pris qe mis i unt e meintenaunt respoignent al creaunzur de sa dette. E si le dettur voille dire qe ces biens moebles fuerent venduz ou liverez pur meins qe il ne vailent de ceo ne purra il remedie aver par quei qe le Meire ou le viscunte eyent leaument les biens moebles a celui qi plus offri vendu car il purra retter a lui mesmes qe avaunt le jor de la soute poeit ses biens moebles aver vendu e par sa main les deniers leve e ne voleit. E si le dettur ne ad moebles dunt tute le dette puisse estre levee dunqe seit sun cors pris ou qe il seit trove e en prison tenu desqe taunt qe il eit fet gre ou ses amis pur lui. E si il nad del soen dunt estre sustenu en prisun le creaunzur lui trusse pain e ewe issi qe il ne moerge pur defaute les quels custages le dettur lui rende od la dette avaunt ceo qe il issi de prisun. E si le creaunzur seit marchaunt estraunge il demorra as custages del dettur tut le tens qe il siwera pur sa dette lever desqe al jor qe les biens moebles al dettur seient venduz ou a lui liverez. E si le creaunzur ne se pae pas de la seurte soulement le dettur parqei plegges lui soient trovez ou mainpernours les mainpernours ou les plegges veignient devaunt le Meire e le avauntdit clerk e se obligent par escrit e par reconoissaunce si com avaunt est dit del dettur. En mesme la manere si la dette ne seit pace al jor asis seit fete la execution sur les plegge ou mainpernours cum avaunt est dit del dettur.

No. 1.
11 Edward I. c. 1.

'before him and the Clerk 'aforesaid unto the Chancellor, under the King's Seal; 'and tho Chancellor shall direct a Writ unto the Sheriff, 'in whose Bailiwick the Moveables of the Debtor be, and 'the Sheriff shall cause him 'to agree with his Creditor 'in such Form as the Mayor 'should have done in case that 'the Moveables of the Debtor 'had been within his Power. 'And let them that shall praise 'the moveable Goods, to be 'delivered unto the Creditor, 'take good Heed, that they do 'set a reasonable Price upon 'them; and if they do set an 'over high Price for Favour 'born to the Debtor, and to 'the Damage of the Creditor, then shall the Thing so 'praised be delivered unto 'themselves at such Price as 'they have limited, and they 'shall be forthwith answerable 'unto the Creditor for his 'Debt. And if the Debtor 'will say, that his moveable 'Goods were delivered or 'sold for less than they were 'worth, yet shall he have no 'Remedy thereby; for when 'the Mayor or the Sheriff hath 'sold the moveable Goods 'lawfully to him that offered 'most, he may account it his 'own Folly, that he did not 'sell his own moveable Goods 'himself before the Day of 'his Suit (when he might, and 'would not) and have levied 'the Money with his own 'Hands. And if the Debtor 'have no Moveables whereupon the Debt may be levied, 'then shall his Body be taken where it may be found, 'and kept in Prison, until 'that he have made Agree-

A Certificate of the Statute into the Chancery.

The Goods extended delivered to the Praisers.

The Debtor imprisoned.

*Ex Rot. in Turr.* Lond.

No. 1.
11 Edward I.
1.

ment, or his Friends for him; and if he have not wherewith he may sustain himself ' in Prison, the Creditor shall find him Bread and Water, to the End that he die not in Prison for default of Sustenance, the which Costs the Debtor shall recompense him with his Debt, before that he be let out of Prison. And if the Creditor be a Merchant-stranger, he shall remain at ' the Costs of the Debtor for ' so long Time as he tarrieth ' about the Suit of his Debt, ' and until the moveable Goods ' of the Debtor be sold or delivered unto him. And if the ' Creditor do not take the Debtor alone for the Surety of his ' Payment, by reason whereof ' Pledges or Mainpernors be ' founden, then those Pledges ' or Mainpernors shall come ' before the Mayor and Clerk ' abovesaid, and shall bind ' themselves by Writings and ' Recognizances, as afore is ' said of the Debtor. And in ' like Manner if the Debt be ' not paid at the Day limited, ' such Execution shall be awarded against the Pledges ' or Mainpernors, as before is ' said of the Debtor.

The Debtor's Diet.

The Creditor a Stranger.

The Creditors Pledges.

' II. Provided nevertheless, That so long as the ' Debt may be fully taken and ' levied of the Goods moveable of the Debtor, the Mainpernors or Pledges shall be ' without Damage: Notwithstanding for default of moveable Goods of the Debtor, ' the Creditor shall have Execution of his Recognisance ' upon the Mainpernors or ' Pledges, in such Manner and ' Form as before is limited, ' against the principal Debtor.'

Issi ne purquant qe taunt come la dette pusse pleinement estre levee des biens moebles al dettur les mainpernours ou les plegges ne eyent damage. Mes en defaute des biens moebles al dettur eit le creaunzur recoverir sur les mainpernours ou sur les plegges en la forme qe avaunt est dite del dettur. E a sustenir les custages lavaundit clerk si prendra le Rei de chescune livre un denier. Cest ordeinement e establisement veut le Rei qe desoremes seit tenu par tut sun reaume de Engleterre entre quel gent qe ceus seient qe de lur ein degre voderunt tele reconoisaunce fere

*Ex Rot. in Turr.* Lond. forspris Jeus as quels cest establisement ne se estent pas. E par cest establissement ne seit bref de dette abatu. E ne soyent pas le Chançelier, Baruns del Escheqere, Justices del un Baunc del autre, e Justices erraunz, forclos de prendre, reconoissaunces de dettes de ceus qi devant eus le voderunt fere. Me[...]s executions de conoissaunc[...] devaunt eus ne seyent pas fetes par la forme avauntdite, m[...] par la ley, e [...] usage, e [...] maniere avaunt [...]. Donee a Actone Burnel [...] [...]zim jor de Octobre en [...] de nostre regne unzim.

Consimilia Statuta habent majores Ebor[...] & Bristol' Linc. & Winton. & Salop.

No 1. 11 Edward I. c. 1.

## No. 2.

### [1]3 Edward I. stat. 1. (Westminster the second) c. 18. — He that recovereth Debt may sue Execution by *Fieri facias*, or *Elegit*.*

CUM debitum fuerit recuperatum vel in curia Regis recognitum vel dampna adjudicata sit decetero in electione illius qui sequitur pro hujusmodi debito aut dampnis sequi breve quod vicecomes fieri faciat de terris & catallis vel quod vicecomes liberet ei omnia catalla debitoris exceptis bobus & affris caruce & medietatem terre sue quousque debitum fuerit levatum per rationabile pretium vel extentam. Et si ejiciatur de illo tenemento habeat recuperare per breve Nove disseisine & postea per breve Reddisseisine si necesse fuerit.

'WHEN Debt is recovered or knowledged in the King's Court, or Damages awarded, it shall be from henceforth in the Election of him that sueth for such Debt or Damages, to have a Writ of *Fieri facias* unto the Sheriff for to levy the Debt of the Lands and Goods; or that the Sheriff shall deliver to him all the Chattels of the Debtor (saving only his Oxen and Beasts of his Plough) and the one half of his Land, until the Debt be levied upon a reasonable Price or Extent. And if he be put out of that Tenement, he shall recover by a Writ of *Novel disseisin*, and after by a Writ of *Redisseisin* if need be.'

No. 2. 13 Edward I. st. 1. c. 18. The Execution of a Debt recovered.

Assise maintainable by Tenant by Elegit.

* For the Law respecting Execution by Elegit, see Williams's Notes, 2 Saund. 68.

## No. 3.

13 Edward I. stat. 1. (Westminster the second) c. 45.—The Process of Execution of Things recorded within the Year, or after.

No. 3. 13 Edward I. st. 1. c. 45.

"BECAUSE that of such "Things as be recorded "before the Chancellor and the "Justices of the King that have "Record, and be inrolled in "their Rolls, Process of Plea "ought not to be made by "Summons, Attachments, Es-"soin, View of Land, and "other Solemnities of the "Court, as hath been used to "be done of Bargains and "Covenants made out of the "Court;" 'from henceforth 'it is to be observed, That 'those Things which are found 'inrolled before them that have 'Record, or contained in 'Fines, whether they be Con-'tracts, Covenants, Obliga-'tions, Services, or Customs 'knowledged, or other Things 'whatsoever inrolled, wherein 'the King's Court, without 'Offence of the Law and Cus-'tom, may execute their Au-'thority, from henceforth they 'shall have such Vigour, that 'hereafter it shall not need to plead for them. But when the Plaintiff cometh to the King's Court, if the Recogni-'sance or Fine levied be fresh, 'that is to say, levied within 'the Year, he shall forthwith 'have a Writ of Execution 'of the same Recognisance 'made. And if the Recog-'nisance were made, or the 'Fine levied of a further Time 'passed, the Sheriff shall be 'commanded, that he give 'Knowledge to the Party of 'whom it is complained, that 'he be afore the Justices at a

There shall be no Delays in those Things that be recorded.

Execution of Things recorded.

A Scire Facias after the Year.

*Ex Rot. in Turr.* Lond.

QUIA de hiis que recordata sunt coram Cancellario Domini Regis & ejus Justitiariis qui recordum habent & in rotulis eorum irrotulata non debet fieri processus placiti per summonitionem attachiamentum essonium visus terre & alias solemnitates Cur' sicut fieri consuevit de contractibus & conventionibus factis extra curiam observandum est decetero quod ea que inveniuntur irrotulata coram hiis qui recordum habent vel in finibus contenta sive sint contractus sive conventiones sive oligationes sive servicia aut consuetudines recognitiones vel alia quecumque irrotulata quibus Curia Regis sine juris & consuetudinis offensa auctoritatem potest prestare talem decetero habeant vigorem quod non sit necesse de hiis imposterum placitare. Set cum venerint conquerentes ad Curiam Domini Regis si recens sit cognitio vel finis videlicit infra annum in brevi levatus statim habeant breve de executione illius recognitionis facte. Et si forte a majori tempore transacto facta fuerit illa recognitio vel finis levatus precipiatur vicecomiti quod scire faciat parti de qua fit querimonia quod sit ad certum diem ostensura si quid sciat dicere quare hujusmodi irrotulata vel in fine contenta executionem habere non debeant. Et si ad diem non venerit vel forte venerit & nichil sciat dicere quare executio fieri non debeat precipiatur

*Ex Rot. in Turr.* Lond.

vicecomiti quod rem irrotulatam vel in fine contentam exequi faciat. Eodem modo mandetur ordinario in suo casu observato nichilominus quod supradictum est de medio qui per recognitionem aut judicium obligatus est ad acquietandum.

'certain Day, to shew if he 'have any Thing to say why 'such Matters inrolled or con- 'tained in the Fine ought not 'to have Execution. And if 'he do not come at the Day, or 'peradventure do come, and 'can say nothing why Execu- 'tion ought not to be done, the 'Sheriff shall be commanded 'to cause the Thing inrolled or 'contained in the Fine to be 'executed. In like Manner, 'an Ordinary shall be comman- 'ded in his Case, observing 'nevertheless as before is said 'of a Mean, which by Recog- 'nisance or Judgement is bound 'to acquit.'

No. 3. 13 Edward I. st. 1. c. 45.

Ordinary.

A Mean.

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## No. 4.

### The Statute of Merchants, made at Westminster Anno 13 Edward I. stat. 3. and Anno Dom. 1285.

### Cap. 1.

The Form of knowledging a Statute Merchant. The Creditor's Remedy if his Debt be not paid. The King's Seal shall be sent to Keepers of Fairs. Taking of Recognizance.

PUR ceo qe marchaunz qi avaunt ces hures unt prest lur aver a divers genz sunt cheuz en poverte pur ceo qe il ni avoit pas si redde ley purvewe par la quele il poeient lur dettes hastevement recovrir au jour assis de paye e par cele encheson sunt mult des marchaunz sustrez de venir en ceste terra ove lur marchaundises a damage des marchaunz e de tut le reaume le rey par luy e par sun counseil a sum parlement qe il tint a Acton Burnell apres la seint Michell le an de sun regne uzime sist e ordina

"FORASMUCH as Merchants, which heretofore have lent their Goods "to divers Persons, be fallen "in Poverty, because there is "no speedy Remedy provided, "whereby they may shortly "recover their Debt at the "Day of Payment; and for "this Cause many Merchants "do refrain to come into the "Realm with their Merchan- "dize, to the Damage of such "Merchants and of all the "Realm;" the King and his 'Council at his Parliament 'holden at *Acton Burnel*, after

No. 4. 13 Edward I. st. 3. c. 1.

No. 4.
13 Edward I.
st. 3. c. 1.

'the Feast of *St. Michael*, the 'eleventh Year of his Reign, or'dained Establishmnets there'upon for the Remedy of such 'Merchants; which Ordinan'ces and Establishments, the 'King commanded that they 'shall be firmly kept and ob'served thoughout this Realm, 'whereby Merchants have had 'Remedy, and have recovered 'their Debts with less Incon'venience and Trouble, than 'they had heretofore.' "But "forasmuch as Merchants "after complained unto the "King, that Sheriffs misinter"preted his Statutes, and some"times by Malice and false "Interpretation delayed the "Execution of the Statute, to "the great Damage of Mer"chants;" 'The King at his 'Parliament holden at *West'minster* after *Easter*, the 'thirteenth Year of his Reign, caused the said Statute made at *Acton Burnel* to be rehears'ed; and for the Declaration 'of certain Articles in the Sta'tute aforesaid, hath ordained 'and established, That a Mer'chant who will be sure of his 'Debt, shall cause his Debtor 'to come before the Mayor of '*London*, or before some chief 'Warden of a City, or of 'another good Town, where 'the King shall appoint, and 'before the Mayor and chief 'Warden, or other sufficient 'Men chosen and sworn there'to, when the Mayor or chief 'Warden cannot attend, and 'before one of the Clerks that 'the King shall thereto assign, 'when both cannot attend, he 'shall acknowledge the Debt 'and the Day of Payment; and 'the Recognizance shall be en'rolled by one of the Clerks

The Form of acknowledging of a Statute Merchant.

s.ling of a Stat.

*Ex Rot. in Turr.* Lond.

establissement sur ceo a reme-die des marchaunz le quel or-deinement e establissement le rey comaunda qe tenuz fuissent e fermement gardez en tut sun reaume dunt marchaunz unt eu remedie e a mains meschief e travail unt recovere lur dettes qe avaunt ne soleient. Mes pur ceo qe marchaunz puys se pleindrent al rey qe Viscuntes qui malement enterpreterent sun statut e aconefei par malice e par mal enterpreteison de-laerent lexecucion del statut a graunt damage des marchaunz le rey a sun parlement a Westm' apres Pask lan de sun regne troizime fist reciter lavaundit statut fet a Acton Burnell e pur declarer aquns articles de sun statut avauntdit ad ordine e establi qe mar-chaunt qi veut estre seure de sa dette face venir sun dettur de-vaunt le meyre de [a] Appelby ou devaunt autre chief gardeyn de vile ou de autre bone vile ou le rey ordinera e devaunt le meire ou chief gardein ou au-tre prodhome a ceo esleu e jure quaunt meire ou chief gar-deyn ne poet entendre e de-vaunt un des clers qi le rey a ceo attornera quaunt ambodeus ne poent entendre conusse la dette e jour de la paie e seit la conoissaunce enroullee de la main del un des clers avaunt-diz qi serra conue e le roule duble dunte le un demorge vers le meire ou chief gardein e lautre vers le clerk qi a ceo primes serra nome e ostre ceo un des avauntdiz clers de sa main face le escrit de obliga-cion a quel escrit seit mis le seel del dettur ove le seel le rey qe a ceo est purveu le quel seel serra de deus pieces dunt lo greignour piece demo-

[a] Londres, *Cotton MS.*

No. 4.
13 Edward I. st. 3. c. 1.

*Ex Rot. in Turr.* Lond.
era en la garde le meire ou chief gardein e lautre piece en la main le clerk avauntdit. E si le dettur ne rende al jour qe lui est assis si veigne le marchaunt al meyre e al clerk ove sa lettre de obligacion e si trove seit par roule ou par lettre qe la dette fust conue e le jour assis seit passe si face le meyre ou chief gardeyn prendre le cors al dettur sil est lay quel heure qe il seit trove en son poer e liverer a la prison de la vile si prison y seit e la demoerge a ses custages propres desqe ataunt qil eit fet gre de la dette. E commaunde est qe le gardein de la prison de la vile le reteigne par la livere del meyre ou le gardeyn e sil ne le voille receivre si respoigne maintenant le gardein de la prison de la detta sil eit de qei e sil nad de qei cy respoigne celui qi la prison luy bailla a garder. E si le dettur ne poet estre trove en le poer del meyre ou chief gardein dunqe maunde le meyre ou chief gardein de suz le seel le rey avauntdit al chaunceler la conoissaunce fete de la dette e le chaunceler envoie bref al viscunte en qi baillie le dettur serra trove qil preigne son cors sil est lay e en save prison le garde desqe ataunt qil eit fet gre de la dette e dedenz un quarter del an apres ceo qe il serra pris eit ses chateus e ses terres delivres issint qe par les soens puisse lever e paier la dette e bien luy list dedenz le quarter terre & tenement vender pur ses dettes aquiter e sa vente serra ferme & estable. E sil ne face gre dedenz le quarter passe soient liverez au marchaunt tutz les

'Hands being known, and the 'Roll shall be double, whereof one Part shall remain with 'the Mayor or chief Warden, 'and the other with the Clerks 'that thereto shall be first 'named; and further, one of 'the said Clerks with his own 'Hand shall write an Obligation, to which Writing the 'Seal of the Debtor shall be 'put with the King's Seal provided for the same Intent; 'which Seal shall be of two 'Pieces, whereof the greater 'Piece shall remain in the 'Custody of the Mayor, or the 'chief Warden, and the other 'Piece in the keeping of the 'foresaid Clerk. And if the 'Debtor do not pay at the Day 'limited unto him, then shall 'the Merchant come to the 'Mayor and Clerk with his 'Obligation: and if it be 'found by the Roll or Writing, 'that the Debt was acknowledged, and the Day of Payment expired, the Mayor or 'chief Warden shall cause the 'Body of the Debtor to be 'taken (if he be Lay) whensoever he happeneth to come 'in their Power, and shall commit him to the Prison of the 'Town, if there be any, and he 'shall remain there at his own 'Costs, until he hath agreed 'for the Debt. And it is commanded that the Keeper of 'the Town Prison shall retain 'him upon the Delivery of the 'Mayor or Warden; and if 'the Keeper shall not receive 'him, he shall be answerable 'for the Debt, if he have 'whereof; and if he have not 'whereof, he that committed the 'Prison to his keeping shall 'answer. And if the Debtor 'cannot be found in the Power

The Creditor's Remedy if the Debt be not paid.

Certificate of the Statute into the Chancery.

No. 4.
13 Edward I. st. 1. c. 1.

*Ex Rot. in Turr.* Lond.

'of the Mayor, or chief Warden, 'then shall the Mayor or chief 'Warden send into the Chancery, under the King's Seal, 'the Recognisance of the Debt; 'and the Chancellor shall direct a Writ unto the Sheriff, 'in whose Shire the Debtor 'shall be found, for to take his 'Body (if he be Lay) and safely 'to keep him in Prison until he 'hath agreed for the Debt; 'and within a Quarter of a 'Year after that he is taken, 'his Chattels shall be delivered 'him, so that by his own he 'may levy and pay the Debt; 'and it shall be lawful unto 'him, during the same Quarter, to sell his Lands and Tenements for the Discharge of 'his Debts, and his Sale shall 'be good and effectual. And 'if he do not agree within the 'Quarter, next after the Quarter expired, all the Lands and 'Goods of the Debtor shall be 'delivered unto the Merchant 'by a reasonable Extent, to 'hold them until such Time as 'the Debt is wholly levied; 'and nevertheless the Body 'shall remain in Prison as before is said, and the Merchant shall find him Bread 'and Water, and the Merchant 'shall have such Seisin in the 'Lands and Tenements delivered unto him or his Assignee, that he may maintain a 'Writ of *Novel disseisin*, if he 'be put out, and Redisseisin 'also, as of Freehold, to hold 'to him and his Assigns until 'the Debt be paid; and as 'soon as the Debt is levied, 'the Body of the Debtor shall 'be delivered with his Lands. 'And in such Writs as the 'Chancellor doth award, mention shall be made, that the

Within what Time the Debtor may sell his Land.

What Estate the Merchant shall have in the Debtor's Lands.

biens del detter e totes ses terres par resnable estent a tenir desqe ataunt qe la dette pleinement serra levee e ja le plus tart le cors demoerge en prison cum avaunt est dit e le marchaunt luy truisse pain e ewe e eit le marchaunt en ceuls tenemenz a luy liverez ou son assigne tele seisine qil puisse porter bref de Novele disseisine sil seit engete e de redeseisine auxi si cum de frank tenement a tenir a lui e a ses assignez taunt qe la dette sait paiee e apres la dette levee e paee seit le cors al dettur delivere ove sa terre E en le bref qe le chaunceler enverra seit mencion fet qe le viscunte certifie les justices del un baunc ou del autre coment il avera furni le comaundement le rey a un certaein jour a quel jour le marchaunt si sun gre ne soit fet sue devaunt les Justices e si le Viscunte ne returne nul bref ou returne qe le bref vint trotart ou qil ad maunde al baillifs de la fraunchise si facent les justices solom ceo qil est contenu en le drein statut de Westmr'. E si par cas le Viscunte maunde qe le dettur nest pas trove ou seit clerk si eit le marchaunt brei a tuz les Viscuntes ou il avera terre qil lui liverent tuz les chateus e les tenemenz al dettur par resnable estent a tenir a luy e a ses assignez en la furme qe est avauntdite e ja le plus tart eit bref a quel Viscunte qil vodra deprendre son cors sil est ley e tenir en la furme avauntdite. E bien se garde le gardein de la prisun qil luy covendra respundre del cors ou de la dette. E apres ceo qe les terres al detter ferrunt livereez al marchaunt bien lirra

*Ex Rot. in Turr.* Lond.

au dettur sa terre vendre issint qe le marchaunt neit damage de ses approvemenz e sauvez seint touz jours al marchaunt damages e chescunz custagez necessaries e resunnables en travail sutes delaies e en despenses. E si le dettur truisse plegges qi se conoissent estre principals detturs apres le jour passe seit fet des plegges en totes choses cum est dit del principal dettur quant a cors prendre e terres liverer e autres choses. E quant les terres al detturs serrunt liverez as marchauntz si eit seisine de totes les terres qe furent en le main le dettur le jour qe la conoissaunce fu fete en qi mein qe eles serrunt apres devenuz ou par feffement ou per autre manere. E pres la dette paie les terres issuz del dettur par feffement returnent auxibien arere al feffe cum les autres terres as detturs. E si le dettur ou plegge moerge point neit le marchaunt recoverir a prendre le cors le eir mes a ses terres cum avaunt est dit sil est de age ou quant il serra de age. E seit purveu un seel qi serve as feires e ceo seel serra envoie a chescune feire desuz le seel le rey par un clerk jure e par le gardein de la feire. E par la communaute des marchaunz seient eslus deus leus marchaunz de la cite de Lundres qil facent le serment e devaunt eus seit le seel overt e la une peece seit baille as avountdiz marchaunz e lautre demoerge vers le clerk e devaunt eux ou le un des marchaunz si amdeus ni poent estre seient les conoissaunces fetes cum devaunt est dit. E avaunt ceo qe nul reconois-

No. 4. 13 Edward I. st. 3. c. 1.

'Sheriff shall certify the Justices of the one Bench or of 'the other, how he hath performed the King's Commandment, at a certain Day, at 'which Day the Merchant 'shall sue before the Justices, 'if Agreement be not made; 'and if the Sheriffs do not return the Writ, or do return 'that the Writ came too late, 'or that he hath directed it to 'the Bailiffs of some Franchise, the Justices shall do as 'it is contained in the latter 'Statute of *Westminster*. And 'if in case the Sheriff return, 'that the Debtor cannot be 'found, or that he is a Clerk, 'the Merchant shall have 'Writs to all the Sheriffs where 'he shall have Land, and that 'they shall deliver unto him 'all the Goods and Lands of 'the Debtor by a reasonable 'Extent, to hold unto him and 'his Assigns in the Form aforesaid; and at the last he shall 'have a Writ to what Sheriff 'he will, to take his Body (if 'he be Lay) and to retain it 'in Manner aforesaid. And 'let the Keeper of the Prison 'take Heed, that he must 'answer for the Body, or for 'the Debt. And after the 'Debtor's Lands be delivered 'to the Merchant, the Debtor 'may lawfully sell his Land, 'so that the Merchant have no 'Damage of the Approvements; and the Merchants 'shall always be allowed for 'their Damages, and all Costs, 'Labours, Suits, Delays, and 'Expences reasonable. And 'if the Debtor find Sureties 'which do acknowledge themselves to be principal Debtors, after the Day passed

How the Debtor's Sureties shall be used.

No. 4.
13 Edward I.
st. 3. c. 1.

the Sureties shall be ordered in all Things as is said of the principal Debtor, as to the Arrest of Body, Delivery of Lands, and other Things. And when the Lands of the Debtors be delivered unto the Merchant, he shall have Seisin of all the Lands that were in the Hand of the Debtor, the Day of the Recognisance made, in whose 'Hands soever that they come 'after, either by Feoffment, or 'otherwise. And after the 'Debt paid, the Debtor's 'Lands, and the Issues of 'Lands of Debtors by Feoff'ment shall return again, as 'well to the Feoffee, as the 'other Lands unto the Debtors. 'And if the Debtor or his 'Sureties die, the Merchant 'shall have no Authority to 'take the Body of his Heir, 'but he shall have his Lands, 'as before is said, if he be of 'Age, or when he shall be of 'full Age. And a Seal shall 'be provided, that shall serve 'for Fairs, and the same shall 'be sent unto every Fair under 'the King's Seal by a Clerk 'sworn, or by the Keeper of 'the Fair. And of the * *Com'monalty of the Merchants of 'the City of* London, *two Mer'chants shall be chosen,* that 'shall swear, and the Seal 'shall be opened before them, 'and the one Piece shall be 'delivered unto the foresaid 'Merchants, and the other 'shall remain with the Clerk; 'and before them, or one of 'the Merchants (if both can'not attend) the Recognisances 'shall be taken, as before is 'said. And before that any 'Recognisance be inrolled, the

What Lands shall be extended.

The Heir's Lands, but not his Body, shall be extended.

A Seal for Fairs.

* Q. *And by the Commonalty of Merchants, two shall be chosen who are Merchants of the City of London.*

The Statute shall be read to the Debtor.

*Ex Rot. in Turr.* Lond.

saunce seit enroullee seit la peine del statut apertiement leu devaunt le dettur issint qil ne puisse autrefoiz dire qe lom li met autre peine qe icele au quele il se obliga. E a sustenir les custages del avauntdit clerk si prendra le rey de chescune livre un den' en chescune vile ou le seel serra horpris faire ou il prendra treis mailles de la livre. Cest ordeinement e establisement veut le rei qe desoremes seit tenu par tut sun reaume de Engleterre e de Irlaunde entre quelz genz qi ceo soient qi de lour endegre vodrunt tele reconnoissaunce fere forspris Jeus as queus cest establisement ne sestent pas. Et par cest Establisement ne seit pas bref de dette abatu e ne seient pas le Chaunceler Baruns del Escheker Justices del un baunc e del autre e Justices erraunx forclos deprendre reconoissaunces de dettes de eus qi devaunt eux les vodrunt fere mes les execucions des conoissaunces devaunt eus fetes nen seient pas fetes par la furme avauntdite mes par la ley e le usage e la manere purveue aillors en autre estatut.

Rex vic' salutem. Quia coram tali majore vel custode talis ville, vel coram custode sigilli nostri de mercatoribus in nundinis in tali loco, & tali clerico nostro A. recognovit debere B. tantum quod solvisse debuit tali die & tali anno, quod idem A. nondum solvit, ut dicit: Tibi præcipimus, quod corpus prædicti A. si laicus sit, capias, & in prisona nostra salvo custodiri facias, quousque depraedict' debito satisfecerit. Et qualiter

*Ex Rot. in Turr.* Lond.

hoc præceptum nostrum fueris executus, scire facias justitiariis nostris apud Westmonasterium per literas tuas sigillatas, & habeas ibi hoc breve. Teste, &c.

'Pain of the Statute shall be 'openly read before the Debt'or, so that after he cannot 'say that any did put another 'Penalty than that whereunto 'he bound himself. And to 'maintain the Costs of the 'said Clerk, the King shall 'take of every Pound a Pen'ny, in every Town where the 'Seal is, except Fairs, where 'he shall take one Penny Half'penny of the Pound. This 'Ordinance and Act the King 'willeth to be observed from 'henceforth throughout his 'Realm of *England* and *Ire'land*, amongst the which Peo'ple they that will may make 'such Recognisances (except '*Jews*, to whom this Ordinance 'shall not extend.) And by this 'Statute a Writ of Debt shall 'not be abated: and the Chan'cellor, Justices of the one 'Bench and the other, the 'Barons of the Exchequer, 'and Justices Errants, shall 'not be estopped to take Re'cognizances of Debts of those 'who are willing to acknow'ledge them before them: But 'the Execution of Recogni'sances made before them shall 'not be done in the Form 'aforesaid, but by the Law 'and Manner before used, and 'otherwise provided in other 'Statutes.'

No. 4. 13 Edward I. st. 3. c. 1.

The King's Duty upon a Statute acknowledged.

Taking of Recognizances.

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## No. 5.

### 27 Edward III. st. 2. c. 9.—The Effect of a Recognisance knowledged in the Staple for Recovery of a Debt.

*MS. Reg.*

ITEM afyn que lez contractz faitez deinz lestaple soit le meutz tenuz, et lez paimentz prestement faitez si avoms ordeigne et establiz, que chescun mair des dits estaples eiet poair de prendre recognisances de dettes que home voudra

No. 5. 27 Edward III. st. 2. c. 9.

*MS. Reg.*

No. 5.
27 Edward III. st. 2. c. 9

In what Manner Execution shall be made of the Statute-Staple.

Execution awarded out of the Chancery, if the Debtor have not sufficient in the Staple.

What Estate the Creditor shall have in the Debtor's Land extended.

faire devant luy en presence des constables de lestaple ou lun de cux, et quen chescun dez ditez estaples soit un seal ordeigne, demuraunt en le garde du dit mair de lestaple south lez seals des counstables, et que toutz obligations que y serrount faitez sur tielx reconisaunces soient enseals de dite seal payaunt pur chescun obligation de C. li et dedens de chescun livere un maille. Et de chescun obligation outre C. li. de chescun livere un esterlinge. Et qe le mair de lestaple per vertu de celes lettres puisse prendre et tenir en prison les corps du dettour apres la terme encorus, sil soit trove deins lestaple, tanque ils eient fait gre au creditour de la dete et des damages, et auxint darester lez biens de mesmes lez dettours trovez deinz la dite estapule, et deliverer leq dites biens as creditours per verroi estimation, ou de lez vendre a mieutz que homme purra, et deliverer lez denurs as ditez creditours, tanque al somme due. Et en cas que lez dettours ne soient trovez deinz lestaple, ne lour biens a la value de la dette, soit ceo certifie en Chauncellerie south le dit seale; sur quel certification soit brief maunde, de prendre lez corps dez ditez dettours saunz lez mettre a meinprize, et de seisir lour terres et tenementz bienz et chateux, et soit la dit bref retourne in nostre Chauncellerie ove la certification de la value dez ditez terres et tenementz bienz et chateux, et sur ceo y soit due execution fait de jour en jour, en la manere come il est contenuz en lestatut marchaunt; issint que celui a qi le dette est due eit estat de franke tenement en lez terres et tenementz que luy serrount liveres per vertue de cel proces, et recoverer per lettre de novel dissesine en cas quil soit ouste, et que le dettour neit my avauntage del quarter dun an, que est contenuz en le dit estatut marchaunt. Et en cas que nul creditour ne voille aver letters de dite seal, eins voille estre a la foie le dettour, si apres la terme encoru il demaunde le dette, soit le dettour cru sur sa foy.

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## No. 6.

**1 Richard II. c. 12.—A Prisoner by Judgement shall not be let at large. Confession of a Debt to the King to delay another's Execution.**

[Inserted ante. Class III. No. 8.]

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## No. 7.

**5 Henry IV. c. 12.— Execution may be awarded upon a Statute once shewed in Court.**

*Ex Rot. in Turr.* Lond.

No. 7.
5 Henry IV. c. 12.

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|---|---|
| 'ITEM, It is ordained and 'established, That when 'any Statute Merchant is cer- | ITEM ordeignez est et establiz qe qaunt ascun estatut marchant soit certifie en la |

*Ex Rot. in Turr.* Lond.

Chauncellarie & sur ceo brief agarde al viscont & retourne en le commune bank & lestatut illoeques un foitz monstre qe combien qe le processe apres celle demonstrance soit discontinue qa quele heure qe la partie sue de recontinuer le processe & davoir execution del estatut marchant qe les Justices del bank en quel lestatut feust un foitz monstrez puissent sur celle record faire & agarder plein execution del estatut marchant avauntdit sanz avoir de ceo autrefoitz vieu ou demonstrance enapres & qe cest estatut tiegne lieu de toutz estatutz marchantz a cest foitz nient pleinement executz.

'tified into the Chancery, and 'thereupon a Writ awarded to 'the Sheriff, and returned into 'the Common Place, and the 'Statute there once shewed, 'that howsoever the Process 'after the same shewing be 'discontinued, that at what 'Time the Party sueth to have 'the Process recontinued, and 'to have Execution of the 'Statute Merchant aforesaid; 'that the Justices of the Bench, 'where the Statute was once 'shewed, may upon the same 'Record make and award full 'Execution of the Statute Merchant aforesaid, without having the Sight or shewing 'thereof another Time after; 'and that this Statute hold 'Place of all Statutes Merchant, not fully executed at 'this Time.'

No. 7. 5 Henry IV. c. 12.

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## No. 8.

### 11 Henry VI. c. 10.—He shall find Sureties, &c. that sueth to defeat an Execution upon a Statute.

ITEM pur ceo de diversez personez deinz cest Roialme devaunt ces houres sovent foitz ount este priz & arestes par diverses viscountes & autres ministres de Roi par brefs issantz sibien hors de Chauncery de Roi come de sez progenitours pur execution avoir de diversez reconisaunces faitz devaunt lez mairs de lestaples de diversez sommes dez quex sommes icelles persones as quex la duite appent nount remedie covenable autre qe lez ditz executions lez quex persones ensi prisez & arestuz pur lexecution de mesmes lez reconisaunces sount sovent faitz venir par diversez brefs

"ITEM, Because divers "Persons within this "Realm in Times past often "have been taken and arrested by divers Sheriffs and "other Officers of the King, "by Writs as well going out "of the Chancery of the King, "as of his Progenitors, to "have Execution of divers "Recognisances made before "the Mayors of the Staple, of "divers Sums, of which Sums "such Persons, to whom the "Duty belonged, had no convenient Remedy, other than "the said Executions; which "Persons, so taken and arrested for Execution of the same "Recognisances, be often-

No. 8. 11 Henry VI. c. 10.

No. 8.
11 Henry VI.
c. 10.

"times brought by divers "Writs *De corpus cum causa* "before the King in his Chancery, out of Prisons in the "which they be so kept by "Force of such Executions, 'and there they do sue, shewing forth divers Indentures, 'and others Things in Defesance of such Recognizances, desiring Writs of '*Scire facias* to warn the 'Party or Parties at whose 'Suit they be taken and ar- "rested, to answer thereunto; 'and thereupon by Surety 'found to the King in the "Chancery, have been delivered out of Prison, notwithstanding their said Arrest for the Execution of 'such Recognizances, as 'above is said, no Surety "found to the Recognisees to 'whom they be so bound to "satisfy them of their Duties, "in case that the Matters com- "prised within the said Writs "of *Scire facias* be not found "nor adjudged for the Recognisors thereby bound; where- "by the said Recognisees "have been sometime greatly "delayed of their Execution, "and sometime their Execution utterly lost, and in Time "to come likely to be lost, for "that no Advantage nor Avail "thereof might come, be, or "accrue to the said Recognisees to whom such Persons "be so bound by the said "Surety so bound to the King, "seeing the same Person so "bound may by the King's "Pardon be acquit and discharged for ever. Our Lord "the King considering that "the said Recognisees, to "whom Persons be bound, are "oftentimes without Remedy,

*Ex Rot. in Turr.* Lond.

de Corpus cum causa devaunt le Roi en sa Chauncery hors des prisones es quex ils sount issint detenuz a cause de tiel execution & illoqes suent en monstrantz diversez endentures & autres choses en defaisaunces de tiel reconisances enprisantz bref de Scire facias de garnier la partie ou lez parties a qui pursuit ils sount ensi prisez & arestuz a respoundre sur icelles. Et cur ceo suerte trove au Roi en sa Chauncery ount este deliverez hors du prisone nient obstant lour dit areste pur lexecutions dez tielx reconusances come desuis est dit nulle trovez ou reconusez as quex ils sount issint obligez de eux satefier des lours duetees en cas qe les maters compris deinz les ditz briefs de Scire facias ne soient trovez ne adjuggez pur lez reconussours ensi obligez parount les ditz reconuseez ount ascun foitz graundement este delaiez de lour execution & ascun foitz lour execution ent toutoutrement perduz & en temps avenir verisemblablement a perdre a cause qe null avantage ou availl ent purra venir estre ou acresere as ditz reconusez as quex tiels persones sount issint obligez par la dit suerte ensi trovez au Roi par ceo qe mesmes les persones issint obligez par pardon de Roi purrount estre quitez & dischargez pur touts jours. Nostre Seignur le Roi considerant qe lez ditz reconusez as quex persones sount obligez sovent foitz sount sanz remedie si ensi seit qe mesmee lez reconusours nemy voillont pursuer avaunt les ditz briefs de Scire facias ovesque effect ou autrement qe la matere de

*Ex Rot. in Turr.* Lond.

lour ditz breifs de Scire facias soit trove ou adjugge countre eux & sur ceo ils soy retraihent as lieus privileggez ou eux aloinent hors du Roialme ou autrement qils ne my appergent issint qe lour corps puissent estre myz en execution a tresgraunde aderisement & anientisement dez tielx reconusez en temps aveigner. Et auxi pur ceo qe le Roi est enheriteez de la prisez de tiex suertes a luy mesmes par la cours de sa Chauncery le Roi voet qe tiels suertees desore en avaunt soient faitz severalment sibien a Roy come a parte.

" if so be that the said Recognisors would not pursue forth " their said Writs of *Scire* " *Facias* with Effect; or otherwise, that the Matters of the " said Writs of *Scire facias* be " found or adjudged against " them, and thereupon they " withdraw them to Places privileged, or eloign them out " of the Realm, or else they " would not appear, so that " their Bodies might be put in " Execution; to the great Hindrance and Undoing of such " Recognisees in Time to " come; and also because that " the King is inherited of the " taking of such Sureties to " himself by the Course of the " Chancery;" ' the King doth ' will that from henceforth ' such Sureties be made as ' well to the King as to the ' Party.' No. 8. 11 Henry VI. c. 10.

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## No. 9.

23 Henry VIII. c. 6. — For Obligations to be taken by Two Chief Justices, the Mayor of the Staple, and the Recorder of *London*.

' FORASMUCH as the Mayors of the Staple in divers ' Places of this Realm, where any Staple is kept, in the ' Presence of the Constables of the same Staple before this ' Time have and might lawfully take Recognisance or Knowledge for Debts, only concerning and touching the Merchandize of the same Staple, betwixt Merchant and Merchant of ' the same Staple, according to divers laudable Statutes and ' Provisions before this Time had, ordained and made; which ' Mayors and Constables, many and sundry Times since the ' making of the same Statute, have taken divers Recognisances ' and Knowledges of divers of the King's Subjects for Debts, ' surmising the same Knowledge or Recognisance to be made ' for Surety of Payment of Sums of Money for such Wares as ' were or have been bought in the same Staple; where of ' Troth the same Recognisance did not in any wise touch or ' concern the Merchandise of the same, ne also the Parties, ' that is to say, the Cognisor, ne the Cognisee, that did Knowledge and take the same Recognisances, were Merchants of No. 9. 23 Henry VIII. c. 6.

No. 9.
23 Henry VIII. c. 6.

'the same Staple; which Recognisances and Knowledges, 'taken in Form aforesaid, are not only clear contrary to the 'true Meaning and Intent of the same former Estatutes, but 'also thereby divers great and sundry Inconveniences, Dama-'ges, and Deceits do daily arise and grow to divers of the 'Subjects of our Sovereign Lord the King, by reason of the 'misusing of the same; and forasmuch as the King's High-'ness, of his most high Wisdom, perceiveth the Misusing and 'Execution of the same to be contrary to the Form of the said 'former Statutes, therefore his Pleasure is, that some true, law-'ful and reasonable Bond, for Surety of the Payment of the 'Debts of his Subjects, shall be made and devised by true 'and just Means, which in itself may and shall purport 'Right and Equity, and also consonant to Reason.'

Who may take Recognisance in the Nature of a Statute Staple.

II. In Consideration whereof, by the Assent of the King's Highness, his Lords Spiritual and Temporal, and his Commons, in this present Parliament assembled, and by the Authority of the same, it is enacted, ordained, and established, That from the first Day of *April* next coming, the Chief Justice of the *King's Bench*, and the Chief Justice of the *Common Pleas*, which now be, or at any Time hereafter shall be, and every of them by himself, and in their Absence out of the Term, the Mayor of the Staple of *Westminster*, and the Recorder of the City of *London*, for the Time being, jointly together, by his or their Discretions, shall have full Power and Authority to take Recognizances or Knowledges of every of the King's Subjects for the Payment of Debts, according to such Form as hereafter ensueth:

The Form of the Recognizance.

"Noverint universi per present' me *A. B.* & *C. D.* armig' teneri & firmiter obligari Johanni at Style in C. li. sterling' solvend' eidem Johanni aut suo cert' attorn' hoc scriptum ostend' hæred' vel execut' suis in tal' fest' &c. prox' futur' post dat' præsentium; & si defecero *vel* defecerimus in solutione debit' prædict' volo & concedo; *vel sic*, volumus & concedimus, quod tunc currat super me, hæred' & executores meos, *vel* super nos & quemlibet nostrum, hæred' & execut' nostros pœna in statuto stapulæ de debit' pro merchandisis in eadem emptis recuperand' ordinat' & provis' dat tal' die anno regni regis, &c."

By what Seals the same Obligation shall be sealed.

III. And that every Obligation that shall be made as is aforesaid, and knowledged before any of the said Chief Justices, or the said Mayor and Recorder, according to this Act, shall be sealed with the Seal of the Party or Parties that shall recognize or knowledge the same, and also with such Seal as the King's Highness shall ordain and appoint for the same, and with the Seal of one of such of the said Justices, or with the Seals of the said Mayor and Recorder, and with his or their Name or Names subscribed, that so shall take the same Recognizance or Knowledge; and that every of the said Two Justices, and the said Mayor and Recorder, shall have the

Custody of one such Seal, by the King's Highness to be appointed, with one like Print, Scripture, and Fashion, which shall severally remain with them to the Intent above rehearsed.

No. 9. 23 Henry VIII. c. 6.

IV. And further be it enacted by the Authority aforesaid, That such an honest and discreet Person as shall be assigned by the King's Highness, or the sufficient Deputy or Deputies of the same Persons so to be assigned, shall make and write all such Obligations as shall be acknowledged and recognized by Authority of this Act, and shall cause the same Obligations recognized, and acknowledged in Form as is abovesaid, to be inrolled in two several Rolls indented, whereof one shall remain with such of the said Justices, or with the said Mayor and Recorder, that so shall take the same Recognizances in Form aforesaid, and the other Roll with the Writer thereof, appointed for the same; and that the said Person, by the King's Highness to be appointed for making, writing, and inrolling such Obligations, or his sufficient Deputy or Deputies, shall be dwelling or abiding in the said City of *London*, upon Pain to forfeit for every Time that he and his Deputy shall be absent by the Space of two Days, ten Pounds.

The Clerk of the Recognizances shall inroll them, and shall dwell in London. By 8 G. I. c. 25, there shall be three Rolls, &c.

V. And further it is enacted by Authority aforesaid, That the said Person so to be assigned by the King's Highness to write, make, and inroll such Obligations, or his sufficient Deputy or his Deputies, at the Request of the Creditors, their Executors or Administrators, shall certify such Obligations as shall be taken and recognized by Authority of this Act, into the King's Court of Chancery, under the Seal of the said Person so to be appointed for writing, making, and inrolling such Obligations.

Certificate of the Recognizance in the Chancery.

VI. And that every Person and Persons to whom such Obligation shall be made, knowledged, and inrolled (as is aforesaid) their Executors and Administrators, and the Executors and Administrators of every of them, for Default of Payment of the Debts contained in such Obligations, shall have in every Point, Degree, and Condition, against the said Recognizor and Recognizors, and every of them, their Heirs, Executors, and Administrators, and the Heirs, Executors, and Administrators of every of them, like Process, Execution, Commodity, and Advantage in every Behalf, as hath been used and accustomed before this Time to be had, done, or made, of and upon any Obligation of the Statute of the Staple, and under such Manner and Form, as is for the same Statute of the Staple provided, paying for such Process, and Execution to be had, such like Fees as is accustomed for Process and Execution to be had upon Obligations of the same Statute of the Staple, and not above.

Execution upon a Recognizance acknowledged according to this Statute.

VII. And that every such Person and Persons that shall be bounden, or otherwise grieved by virtue of any Obligation to be made by Authority of this Act, shall have their like Remedy by *Audita Querela*, and all other Remedies in the Law, that they might have had in case they had been bounden by Obligation of the Statute of the Staple.

Where the Recognizor shall be relieved by Audita Querela.

No. 9.
23 Henry VIII. c. 6.

The King shall have 1 ob. in the Pound upon Execution sued.

VIII. And that every such Person and Persons that shall have Process for Execution to be had by reason of any such Obligation to be made and knowledged according to this Act, shall pay to the King's Highness, his Heirs or Successors, at the Time of ensealing of the Process for Execution to be had, one Halfpenny for every Pound that shall be contained in the Obligation, whereof Execution shall be required, and not above.

The Remedy for Tenant by Recognizance being disseised.

IX. And that every such Person and Persons that shall happen to have any Execution of any Lands, Tenements, or Hereditaments, by reason of any such Obligations to be made and knowledged (as is abovesaid) their Executors, Administrators, or Assigns, and the Executors, Administrators, and Assigns of every of them, if they, or any of them, being put out or disseised, shall have like Remedy in every Point and Condition, as Persons having Execution in and upon any Statute of the Staple, after Execution to them had, may or might have, by virtue of the said Writing Obligatory of the Statute of the Staple, and Execution of the same.

The Justice's Clerk's Fee upon every Recognizance.

X. And further be it enacted by the Authority aforesaid, That every of the said Justices, and the said Mayor and Recorder, before whom any such Obligations shall be recognized, shall take for every Knowledge of every one such Recognizance *iii. s. iv. d.* and not above; and the Clerk that shall write, make, and inroll the same Obligations, *iii. s. iv. d.* and for the Certificate of every one such Obligation *xx. d.* and if any of the said Justices, Mayor, Recorder, or Clerk, take any of the King's Subjects above the Sum or Sums to them limited by this Estatute, that then the said Justices, Mayor, Recorder, or Clerk, that so shall take contrary to the Form aforesaid, shall forfeit for every Time so offending *xl. li.*

In what Cases Recognizance or Statute Staple may be taken by the Mayor and Constables of the Staple, and in what not.

XI. And further it is enacted by the Authority aforesaid, That from the said first Day of *April*, no Mayor or Constable of the Staple, for the Payment of any Sum or Sums of Money, take any Knowledge or Recognizance of the said Statute of the Staple, of any of the King's Subjects, upon Pain to forfeit for every Time so offending, *xl. li.* the one Moiety of all and singular the said Penalties to be to the King's Highness, and the other Moiety to the Party that will sue for the same; for the Recovery whereof, the Party that will pursue shall have his Remedy by Information, Action of Debt, Bill, or Plaint in any of the King's Courts, in which no Essoin, Protection, nor Wager of Law shall be admitted. Provided alway, That this Act, nor any Thing therein contained, be in any wise prejudicial or hurtful to any Mayor or Constables of the Staple for any Bond or Writing of the Statute of the Staple to be taken or received between Merchants being free of the same Staple, for Merchandise of the same Staple between them lawfully bought and sold.

Recognizances taken before the Statute 11 Edw. I. stat. 1. c. 45.

XII. Provided also, and be it enacted by the Authority aforesaid, That all Recognizances before this Time taken, before the Mayor and Constables of any of the said Staples,

whereof the Sums now be not paid, nor otherwise contented, lawfully avoided, and discharged by the Law, shall be as good and effectual as though they had been verily made for Merchandise of the same Staple, and between Merchant and Merchant of the same Staple, and as they should have been, if this Act had never been had ne made.

No. 9.
23 Henry VIII. c. 6.

No. 10.

32 Henry VIII. c. 5. — For the Continuation of Debts upon Execution.

No. 10.
32 Henry VIII. c. 5.

A Remedy for the Cognizee or Obligee, where Lands delivered to him in Execution be recovered from him.

'WHEREAS before this Time divers and sundry Persons 'have sued Executions, as well upon Judgments for 'them given of their Debts and Damages, as upon such 'Statutes Merchant, Statutes of the Staple or Recognizances, 'as have been to them before made, recognized and know-'ledged, and thereupon such Lands, Tenements and other 'Hereditaments as were liable to the same Execution, have 'been by reasonable Extent to them delivered in Execution for 'the Satisfaction of their said Debts and Damages, according 'to the Laws of this Realm; nevertheless it hath been oftimes 'seen, that such Lands, Tenements and Hereditaments, so 'delivered and had in Execution, have been recovered or 'lawfully divested, taken away, or evicted from the Possession 'of the said Recoverers, Obligees or Recognizees, their 'Executors or Assigns, before such Time as they have been 'fully satisfied and paid off their said Debts and Damages, 'without any manner Fraud, Deceit, Covin, Collusion or other 'Default in the said Recoverers, Obligees or Recognizees, their 'Executors or Assigns; by reason whereof the said Recover-'ers, Obligees and Recognizees have been thereby set clearly 'without Remedy by any manner Suit of the Law, to recover 'or come by any such Part or Parcel of their said Debts and 'Damages as was behind, and not by them levied or received 'before such Time as the said Lands, Tenements and other 'Hereditaments, so by them had in Execution, were recover-'ed, lawfully divested, taken or evicted out of and from their 'Possessions, as is aforesaid, to their great Hurt and Loss, and 'much seeming to be against equal Justice and good Consci-'ence;' for Reformation whereof, be it enacted by Authority of this present Parliament, That if hereafter any such Lands, Tenements or Hereditaments, as be, or shall be had and delivered to any Person or Persons in Execution, as is aforesaid, upon any just and lawful Title, Matter, Condition or Cause, wherewithal the said Lands, Tenements and Hereditaments were liable, tied and bound at such Time as they were delivered and taken into Execution, shall happen to be recovered, lawfully divested, taken or evicted out of and from the Possession of any such Person and Persons, as now have and hold, or hereafter shall have and hold the same in Execution,

No. 10. 32 Henry VIII. c. 5. as is aforesaid, without any Fraud, Deceit, Covin, Collusion or other Default of the said Tenant or Tenants by Execution, before such Time as the said Tenants by Execution, their Executors or Assigns, shall have fully and wholly levied or received the said whole Debt and Damages, for the which the said Lands, Tenements and other Hereditaments were delivered and taken in Execution as is aforesaid; then every such Recoverer, Obligee and Recognizee, shall and may have and pursue a Writ of *Scire facias* out of the same Court from whence the said former Writ or Execution did proceed, against such Person or Persons as the said Writ of Execution was first pursued, their Heirs, Executors or Assigns, of such Lands, Tenements or Hereditaments as were or been then liable or charged to the said Execution, returnable into the same Court at a certain Day, being full forty Days after the Date of the same Writ; at which Day if the Defendant, being lawfully warned, make Default, or appear and do not shew and plead a sufficient Matter or Cause (other than the Acceptance of the said Lands, Tenements or Hereditaments by the said former Writ of Execution) to bar, avoid or discharge the said Suit for the Residue of the said Debt and Damages remaining unlevied or unreceived by the said former Execution, then the Lord Chancellor, or other such Justice or Justices before whom such Writ of *Scire facias* shall be returnable, shall make eftsoons a new Writ or Writs out of the said Record of Judgment, Statute Merchant, Statute Staple or Recognizance of like Nature and Effect as the said former Writ of Execution was, for the levying of the Residue of all such Debt and Damage as then shall appear to be unlevied, unsatisfied or unpaid of the whole Sum or Sums in the said former Writ of Execution contained; any Law, Custom, or other Thing to the contrary heretofore used in any wise notwithstanding.

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## No. 11.

### 29 Elizabeth, c. 4.—An Act to prevent Extortion in Sheriffs, Under-Sheriffs, and Bailiffs of Franchises or Liberties, in Cases of Execution.

No. 11. 29 Elizabeth, c. 4. BE it enacted by the Authority of this present Parliament, That it shall not be lawful, from the first Day of *May* now next ensuing, to or for any Sheriff, Under-Sheriff, Bailiff of Franchises or Liberties, nor for any of their or either of their Officers, Ministers, Servants, Bailiffs or Deputies, nor for any of them, by Reason or Colour of their or either of their Office or Offices, to have, receive or take of any Person or Persons whatsoever, directly or indirectly, for the serving and executing of any Extent or Execution upon the Body, Lands, Goods or (1.) Chattels of any Person or Persons whatsoever, more or

(1.) A Substitution of and for or, in reciting this Statute, ruled to be a fatal Variance; R. v. Marsack, 6 T. R. 771.

No. 11. 29 Elizabeth, c 4.

other Consideration or Recompence, than in this present Act is and shall be limited and appointed, which shall be lawful to be had, received and taken, that is to say, twelve Pence of and for every twenty Shillings, where the Sum exceedeth not one hundred Pounds, and six Pence of and for every twenty Shillings being over and above the said Sum of one hundred Pounds, that he or they shall so levy or extend, and deliver in Execution, or take the Body in Execution for, by Virtue and Force of any such Extent or Execution whatsoever, upon Pain and Penalty that all and every Sheriff, Under-Sheriff, Bailiff of Franchises and Liberties, their and every of their Ministers, Servants, Officers, Bailiffs or Deputies, which at any Time after the said first Day of *May* now next ensuing shall directly or indirectly do the contrary, (2.) shall lose and forfeit to the Party grieved his treble Damages, and shall forfeit the Sum of forty Pounds of good and lawful *English* Money for every Time that he, they or any of them shall do the contrary; the one Moiety thereof to be to our Sovereign Lady the Queen, her Heirs and Successors, and the other Moiety thereof to the Party or Parties that will sue for the same, by any Plaint, Action, Suit, Bill or Information, wherein no Essoin, Wager of Law or Protection shall be allowed. (3.)

How much the Sheriff may take for the serving of an Execution.

The Forfeiture of the Offender, and how it shall be recovered.

II. Provided always, That this Act, or any Thing therein contained, shall not extend to any Fees to be taken or had for any Execution within any City or Town Corporate; any Thing above-mentioned to the contrary thereof notwithstanding.

Fees for Executions within Cities or Towns Corporate.

(2.) The Poundage includes all Charges; and nothing can be charged for the Expense of an Auctioneer; and if more is taken by a Bailiff than the Statute allows, the Action is maintainable against the Sheriff. And by Buller J. "In Actions on simple Contracts and Judgments for a Debt certain, the Expense of levying must be paid by the Plaintiff and not by the Defendant, so that if the Sheriff overcharge, the Plaintiff is the Sufferer. But if the Judgment be for a Penalty, the Plaintiff has a Right to receive the Whole of his Debt, independent of the Expenses of the Execution; and in those Cases the Defendant is the Party injured by the Sheriff's taking more than he ought." Woodgate *v* Knatchbull, 2 T R 148 But by Stat. 43 Geo III. c 46, (ante. Cl 3, No. 36) the Plaintiff may levy the Costs of the Execution in all Cases, and therefore the Defendant is the Party grieved if more is levied than the Act allows. I apprehend that this Statute and the Case cited are in Practice very generally disregarded, and that the Under Sheriff usually requires to be paid the Whole of the Poundage, and leaves the Officer to obtain Satisfaction by extorting illegal Fees

(3.) The Plaintiff in such Action is intitled to Costs; Tyte *v.* Glode, 7 T. R 267.

## No. 12.

1 James I. c. 13.—An Act for new Executions to be sued against any which shall hereafter be delivered out of Execution by Privilege of Parliament, and for Discharge of them out of whose Custody such Persons shall be delivered.

No. 12. 1 James I. c. 13.

'FORASMUCH as heretofore Doubt had been made, if 'any Person being arrested in Execution, and by Privi-'lege of either of the Houses of Parliament set at Liberty, 'whether the Party at whose Suit such Execution was pursued, 'be for ever after barred and disabled to sue forth a new Writ 'of Execution in that Case:'

An Execution against him who is discharged by Privilege of Parliament.

II. For the avoiding of all further Doubt and Trouble which in like Cases may hereafter ensue, Be it enacted by the King's most excellent Majesty, by the Lords Spiritual and Temporal, and by the Commons, in this present Parliament assembled, That from henceforth the Party at or by whose Suit such Writ of Execution was pursued, his Executors or Administrators, after such Time as the Privilege of that Session of Parliament in which such Privilege shall be so granted shall cease, may sue forth and execute a new Writ or Writs of Execution, in such Manner and Form as by the Law of this Realm he or they might have done, if no such former Execution had been taken forth or served: And that from henceforth no Sheriff, Bailiff or other Officer, from whose Arrest or Custody any such Person so arrested in Execution shall be delivered by any such Privilege, shall be charged or chargeable with or by any Action whatsoever, for delivering out of Execution any such privileged Person, so as is aforesaid by such Privilege of Parliament set at Liberty; any Law, Custom or Privilege heretofore to the contrary notwithstanding.

He shall never be charged out of whose Custody such Prisoner shall be delivered.

III. Provided always, That this Act, or any thing therein contained, shall not extend to the Diminishing of any Punishment to be hereafter by Censure in Parliament inflicted upon any Person which hereafter shall make or procure to be made any such Arrest as is aforesaid.

Censure inflicted upon any that shall arrest a Parliament-man.

## No. 13.

3 James I. c. 8.—An Act to avoid unnecessary Delays of Executions.

No. 13. 3 James I. c. 8.

'FORASMUCH as his Highness Subjects are now more 'commonly withholden from their just Debts, and often 'in Danger to lose the same, by Means of Writs of Error, which 'are more commonly sued than heretofore they have been:' Be it therefore enacted by the Authority of this present Parliament, That from and after the End of this present Session of Parliament, no Execution shall be stayed or delayed upon or

In what Cases Execution shall not be stayed upon a Writ of Error.

by any Writ of Error, or *Supersedeas* thereupon to be sued, for the reversing of any Judgement given, or to be given, in any Action or Bill of Debt upon any single Bond for Debt; or upon any Obligation, with Condition for the Payment of Money only; or upon any Action or Bill of Debt for Rent, or upon any Contract; (1.) sued in any of his Highness Courts of Record at *Westminster*, or in the Counties Palatine of *Chester*, *Lancaster*, or *Durham*, or in his Highness Courts of Great Sessions in any of the twelve Shires of *Wales*; unless such Person or Persons in whose Name or Names such Writ of Error shall be brought, with two sufficient Sureties, such as the Court (wherein such Judgement is or shall be given) shall allow of, shall first before such Stay made, or *Supersedeas* to be awarded, be bound unto the Party for whom any such Judgement is or shall be given, by Recognizance to be acknowledged in the same Court, in double the Sum adjudged to be recovered by the said former Judgement, to prosecute the said Writ of Error with Effect, and also to satisfy and pay (if the said Judgement be affirmed) all and singular the Debts, Damages, and Costs adjudged, or to be adjudged upon the former Judgement; and all Costs and Damages to be also

No. 13.
3 James I. c. 8.

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(1.) Bail in Error is not necessary, under this Statute, in Debt for Goods sold; Alexander *v.* Bliss, 7 T. R. 449; or on a Promissory Note; Frier *v.* Bridgman, 2 E. 359: nor in Debt or Bond, conditioned for Payment of Money and Performance of Covenants; Butler *v.* Brushfield, 10 E. 407: nor a Scire Facias, on Judgment by Demurrer, on 8 & 9 W. c. 11, § 8, post. in this Class; Sparks *v.* O'Kelly, 1 Taunt. 168: nor in any Case where, upon any one Taint, Debt would not lie at the Time of making the Statute; Webb *v.* Geddes, 1 Taunt. 540. See other Cases, in which Bail in Equity is required, 13 Chas. II. st. 2, c. 2, ante. Class 3, No. 13. And by 16 and 17 Charles II. ch. 8, s. 3, (post. No. 17) Bail in Error is required in all personal Actions after Judgment. From the Experience of the great Mischiefs and Inconveniences resulting from Writs of Error and Injunctions in Equity, for the Purpose of delaying Executions, I think it would be important to give a further Protection to Persons in whose Favour Judgment has been obtained, and to provide that no Execution should be stayed without the express Order of the Court, or one of the Judges of the Court, by which the Judgment was given, or from which the Writ of Error has issued; or from the Lord Chancellor in case of Error in Parliament; and that no Execution shall be stayed by Injunction, except upon Affidavit of the Merits, and express Order of the Court of Equity, or of the Court in which Judgment was given, or one of the Judges thereof.

A similar Principle has already been adopted by the House of Lords and the Court of Chancery, in Cases of Appeals, which do not stay the Performance of the Decree without express Order.

In Johnes *v.* Johnes, Dows. P. C. 22, Lord Eldon C. said, "he had now been there for twelve Years, attending to Writs of Error, and he found, that not more than one in fifty was argued; so that forty-nine out of fifty were brought for Delay. *Delay was one of the greatest Mischiefs in the Administration of Justice*, and as far as that could be decided by giving exemplary Costs, their Lordships would be disposed to check it." Surely this Testimony is of great Importance, and the Mischief complained of is very little diminished by any possible Operation of the Checks at present existing. The Loss of official Emoluments, which might perhaps operate as an Impediment to any Proposal for correcting the existing Abuse, could be easily compensated by a very moderate Charge upon Executions in general.

No. 13. 3 James I. c. 8.

awarded for the same delaying of Execution. (2.) This Act to have Continuance to the End of the first Session of the next Parliament. [Made perpetual by 3 Car. I. c. 4. sect. 4. 16 & 17 Car. II. c. 8.]

(2.) Bail in Error being liable for the Debt, or Damages and Costs, and not merely for the Surrender of the Principal, are not intitled to Relief upon the Principal becoming Bankrupt; Southcott v. Braithwaite, 1 T. R. 624; and are not discharged by the Principal being taken in Execution after Affirmance; Perkins v. Petit, 2 B. & P. 440.

## No. 14.

### 21 James I. c. 24. — An Act for the Relief of Creditors against such Persons as die in Execution.

No. 14. 21 James I. c. 24.

'FORASMUCH as heretofore it hath been much doubted 'and questioned, if any Person being in Prison and 'charged in Execution by reason of any Judgment given 'against him, should afterwards happen to die in Execution, 'whether the Party at whose Suit or to whom such Person stood 'charged in Execution at the Time of his Death, be for ever 'after concluded and barred to have Execution of the Lands 'and Goods of such Person so dying:'

A new Execution may be awarded against the Lands of him that dies in Execution.

'II. And, forasmuch as daily Experience doth manifest, 'that divers Persons of Sufficiency in Real and Personal Estate, 'minding to deceive others of their just Debts for which they 'stood charged in Execution, have obstinately and wilfully 'chosen rather to live and die in Prison than to make any 'Satisfaction according to their Abilities:' To prevent which Deceit, and for the Avoiding of such Doubts and Questions hereafter; Be it declared, explained and enacted by the King's most Excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the End of this present Session of Parliament, the Party or Parties, at whose Suit or to whom any Person shall stand charged in Execution for any Debt or Damages recovered, his or their Executors or Administrators, may, after the Death of the said Person so charged and dying in Execution, lawfully sue forth and have new Execution against the Lands and Tenements, Goods and Chattels, or any of them, of the Person so deceased, in such Manner and Form to all Intents and Purposes, as he or they or any of them might have had by the Laws and Statutes of this Realm, if such Person so deceased had never been taken or charged in Execution. (1.)

This Act shall not extend to Lands sold bona fide.

III. Provided always, and be it declared and enacted, That this Act shall not extend to give Liberty to any Person or

(1.) By the Irish Statute 35 Geo. III. c. 30, s. 1, a Person who has charged or detained his Debtor in Execution by *ca. sa.* should have the same Execution against the Lands or Goods as if he had not charged or detained him; see 2 Gabbett, 299.

Persons, their Executors or Administrators, at whose Suit or Suits any such Party shall be in Execution, and die in Execution, to have or take any new Execution against any the Lands, Tenements or Hereditaments of such Party so dying in Execution, which shall at any Time after the said Judgment or Judgments be by him sold *bona fide*, for the Payment of any of his Creditors, and the Money which shall be paid for the Lands so sold, either paid or secured to be paid to any of his Creditors, with their Privity and Consent, in Discharge of his or their due Debts, or of some Part thereof; any Thing before in this Act to the contrary thereof in any wise notwithstanding.

No. 14. 21 James I. c. 24.

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## No. 15.

### 13 Charles II. st. 2. c. 2.—An Act for Prevention of Vexations and Oppressions by Arrests, and of Delays in Suits of Law.

[Inserted ante. Class. 3, No. 13.]

## No. 16.

### 16 and 17 Charles II. c. 5. — An Act to prevent Delays in extending Statutes, Judgements, and Recognizances.

No. 16. 16 & 17 Chas. II. c. 5.

Security by Statute Merchant, and of the Staple.

' WHEREAS the Security by Statute Merchant and of the ' Staple is now become of little Use and Benefit by ' the Fraud of the Conusors thereof in sundry Cases, who, to ' prevent the Payment of their Debts, secretly assign small ' Parts of their Lands to several and unknown Persons: And ' it having been used, that if the Creditor take Execution on ' such Statute, yet if the Lands of any One or more Person or ' Persons to whom such Alienation was made, and liable to such ' Execution, be omitted out of such Extent; the same Execution hath been avoided by *Audita Querela*, and the Party ' extending lost his Costs, and was delayed of his just Debt; ' and so again upon any new Extent *toties quoties*; and if any ' One Acre or Parcel of Land happened to descend to an Infant, the whole Execution was deferred till full Age of such ' Infant; and if afterwards other Part of the Lands or Tenements liable to such Debt descended to another Infant, then ' also a farther Delay happened during that Infancy also:'

Executions avoided by Audita Querela.

II. Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That when any Judgement, Statute, or Recognizance shall be extended, the same shall not be avoided or delayed by occasion that any Part of the Lands or Tenements extendible are or shall be omitted out of such Extent; saving always to the Party and Parties whose Lands shall be extended, his and their Heirs, Executors, and Assigns, his and their Remedy for Con-

For what Causes Extents upon Judgements or Statutes shall not be avoided or delayed.

No. 16. 16 & 17 Chas. II. c. 5.

tribution against such Person and Persons, whose Lands are or shall be omitted out of such Extent from Time to Time.

Proviso for Heirs within Age.

III. Provided always, That this Act or any Thing therein contained shall not be construed to give any Extent or Contribution against any Heir within the Age of one and twenty Years, during such Minority of such Heir, for or in respect of any Lands to such Heir descended, farther or otherwise than might have been before the making of this Act.

IV Provided that this Act extend only to such Statutes as are or shall be for Payment of Monies; and to such Extent as shall be within twenty Years after the Statute, Recognizance, or Judgment had and obtained.

V. Provided that this Act shall continue for the Space of three Years, and from thence to the End of the next Session of Parliament, and no longer. [Made perpetual by 22 and 23 Car. II. c. 2.]

## No. 17.

P. 16 and 17 Charles II. c. 8. — An Act to prevent Arrests of Judgement, and superseding Executions.

No. 17. 16 & 17 Chas. II. c. 8.

In what Cases Execution shall not be stayed by Writ of Error, but upon Recognizance entered according to 3 Jac. 1. c. 8.

III. AND be it further enacted by the Authority aforesaid, That from and after the twentieth Day of *March* in the Year of our Lord one thousand six hundred sixty and four, no Execution shall be stayed in any of the aforesaid Courts by Writ of Error or *Supersedeas* thereupon, after Verdict and Judgement thereupon, in any Action Personal whatsoever, unless a Recognizance, with Condition according to the Statute made in the third Year of the Reign of our late Sovereign Lord King *James*, shall be first acknowledged in the Court where such Judgement shall be given: And further, That in Writs of Error to be brought upon any Judgement after Verdict in any Writ of Dower, or in any Action of *Ejectione firmæ*, no Execution shall be thereupon or thereby stayed, unless the Plaintiff or Plaintiffs in such Writ of Error shall be bound unto the Plaintiff in such Writ of Dower, or Action of *Ejectione firmæ*, in such reasonable Sum as the Court to which such Writ of Error shall be directed shall think fit, with Condition, That if the Judgement shall be affirmed in the said Writ of Error, or that the said Writ of Error be discontinued in Default of the Plaintiff or Plaintiffs therein, or that the said Plaintiff or Plaintiffs be nonsuit in such Writs of Error, that then the said Plaintiff or Plaintiffs shall pay such Costs, Damages, and Sum and Sums of Money, as shall be awarded upon or after such Judgement affirmed, Discontinuance or Nonsuit had.

[*See the Act at large, ante: Class* 6. *No.* 13.]

## No. 18.

17 Charles II. c. 8.—An Act for avoiding unnecessary Suits and Delays.

No. 18. 17 Charles II. c. 8.

FOR the avoiding of unnecessary Suits and Delays, be it enacted by the King's most Excellent Majesty, by and

with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That in all Actions Personal, Real, or Mixt, the Death of either Party between the Verdict and the Judgement, shall not hereafter be alledged for Error, so as such Judgement be entered within two Terms after such Verdict. (1.)

No. 18. 17 Charles II. c. 8.

II. And be it further enacted by the Authority aforesaid, where any Judgement after a Verdict shall be had, by or in the Name of any Executor or Administrator, in such Case an Administrator *de bonis non* may sue forth a *Scire facias*, and take Execution upon such Judgement.

III. This Act to continue for the Space of five Years, and from thence to the End of the next Session of Parliament. [Made perpetual by 1 Jac. II. c. 17 § 5.]

(1.) Upon this Statute the Judgment is entered for or against the Party as though he were alive, (1 Salk. 42); and it should be entered, or at least signed, (1 Sid. 385, Barnes 261) within two Terms after the Verdict. But there must be a *Scire facias* to revive it before Execution, (1 Wils. 302) and such *Scire facias*, pursuing the Form of the Judgment, should be general, (2 Ld. Raym. 1280) as in a Judgment recovered by or against the Party himself; Tidd, Chap. 42. If the Plaintiff dies after the Assizes begin, though the Trial be after his death, that is within the Remedy of the Statute; Anon. 1 Salk. 8.

## No. 19.

### 29 Charles II. c. 3. — An Act for Prevention of Frauds and Perjuries.

No. 19. 29 Charles II. c. 3.

X. AND be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of *June* it shall and may be lawful for every Sheriff or other Officer to whom any Writ or Precept is or shall be directed, at the Suit of any Person or Persons, of, for and upon any Judgment, Statute or Recognizance hereafter to be made or had, to do, make and deliver Execution unto the Party in that Behalf, suing, of all such Lands, Tenements, Rectories, Tithes, Rents and Hereditaments, as any other Person or Persons be in any manner of wise seised or possessed, or hereafter shall be seised or possessed, in Trust for him against whom Execution is so sued, like as the Sheriff or other Officer might or ought to have done, if the said Party against whom Execution hereafter shall be so sued, had been seised of such Lands, Tenements, Rectories, Tithes, Rents or other Hereditaments of such Estate as they be seised of in Trust for him at the Time of the said Execution sued; which Lands, Tenements, Rectories, Tithes, Rents and other Hereditaments, by Force and Virtue of such Execution, shall accordingly be held and enjoyed, freed and discharged from all Incumbrances of such Person or Persons as shall be so seised or possessed in Trust for the Person against whom such Execution shall be sued; and if any *Cestuy que Trust* hereafter shall die, leaving a Trust in Fee-simple to descend to his Heir, there

Lands, &c. shall be liable to the Judgements, &c. of Cestuy que Trust;

and held free from the Incumbrances of the Persons seised in Trust.

Trust shall be Assets in the Hands of Heirs.

No. 19. 29 Charles II. c. 3.

and in every such Case such Trust shall be deemed and taken, and is hereby declared to be, Assets by Descent, and the Heir shall be liable to and chargeable with the Obligation of his Ancestors for and by reason of such Assets, as fully and amply as he might or ought to have been, if the Estate in Law had descended to him in Possession in like Manner as the Trust descended; any Law, Custom or Usage to the contrary notwithstanding.

The Day of signing any Judgment shall be entered on the Margent of the Roll.

This Clause extends to Counties Palatine by 8 Geo 1. c. 25. sect. 6.

XIV. Be it enacted by the Authority aforesaid, That, from and after the said four and twentieth Day of *June*, any Judge or Officer of any of his Majesty's Courts of *Westminster*, that shall sign any Judgements, shall, at the signing of the same, without Fee for doing the same, set down the Day of the Month or Year of his so doing upon the Paper Book, Docket or Record which he shall sign; which Day of the Month and Year shall be also entered upon the Margent of the Roll of the Record where the said Judgment shall be entered.

And such Judgements as against Purchasers shall relate to such Time only.

XV. And be it enacted, That such Judgments as against Purchasers *bona fide* for valuable Consideration of Lands, Tenements or Hereditaments to be charged thereby, shall in consideration of Law be Judgments only from such Time as they shall be so signed, and shall not relate to the first Day of the Term whereof they are entered, or the Day of the Return of the Original or filing the Bail; any Law, Usage or Course of any Court to the contrary notwithstanding.

Writs of Execution shall bind the Property of Goods but from the Time of their Delivery to the Officer.

XVI. And be it further enacted by the Authority aforesaid, That from and after the said four and twentieth Day of *June* no Writ of *Fieri facias* or other Writ of Execution shall bind the Property of the Goods against whom such Writ of Execution is sued forth, but from the Time that such Writ shall be delivered to the Sheriff, Under Sheriff, or Coroners, to be executed: And for the better Manifestation of the said Time, the Sheriff, Under Sheriff and Coroners, their Deputies and Agents, shall upon the Receipt of any such Writ, (without Fee for doing the same) endorse upon the Back thereof the Day of the Month or Year whereon he or they receive the same.

[*The Act at large is inserted ante.* P. 2. C. 1. *No.* 17.]

## No. 20.

4 and 5 William and Mary, c. 20.—An Act for the better Discovery of Judgements in the Courts of *King's Bench, Common Pleas,* and *Exchequer,* at *Westminster.*

No. 20. 4 & 5 William & Mary, c. 20.

'WHEREAS great Mischiefs and Damages happen and 'come, as well to Persons in their Lifetimes, but 'more often to their Heirs, Executors, and Administrators, 'and also to Purchasers and Mortgagees, by Judgements 'entered upon Record in their Majesties Courts at *Westminster*,

'against the Persons Defendants, by reason of the Difficulty 'there is in finding out such Judgements:' For Remedy whereof,

No. 20.
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Judgements to be doggetted.

II. Be it enacted by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That the Clerk of the Essoins of the Court of *Common Pleas*, every Clerk of the Doggets of the Court of *King's Bench*, and the Master of the Office of Pleas in the Court of *Exchequer* for the Time being, shall, before the last Day of *Easter* Term next coming, and so in every *Easter* Term after, make or cause to be made and put into an alphabetical Dogget by the Defendants' Names, a Particular of all Judgements for Debt by Confession, *Non sum informatus*, or *Nihil dicit*, entered in the said respective Courts, of the Term of *Saint Hilary* preceding, which shall contain the Name and Names of the Plaintiff and Plaintiffs, the Name and Names of the Defendant and Defendants, his, her, or their Place or Places of Abode, and Title, Trade, or Profession (if any such be in the Record of the said Judgement), and the Debt, Damages, and Costs recovered thereby; and in what County, City, or Town the respective Actions were laid, and the Number Roll of the Entry thereof; and also that every Clerk of the Judgements, and every other Clerk of the said Court of *Common Pleas* and *King's Bench* respectively, shall, within ten Days before the Time aforesaid, bring to the respective Clerks of the Doggets of the said respective Courts, Notes in Writing of all the Judgements by them and every of them respectively entered, of the said Term of *Saint Hilary*, upon Verdicts, Writs of Inquiry, Demurrer, and every other Judgement for Debt or Damages, in all Things as aforesaid; and also that the Clerk of the Judgements, and every other Clerk of the said Court of *Exchequer*, shall, within the Times aforesaid, bring to the said Master of the said Office of Pleas, the like Note in Writing of all the like Judgements by him or them respectively entered of the said Term, in all Things as aforesaid; to the End the same may be (by the Clerk of the Essoins of the said Court of *Common Pleas*, the Clerk of the Doggets of the said Court of *King's Bench*, and Master of the Office of Pleas) respectively entered in the respective Doggets before mentioned, in Manner and Form aforesaid; and also that the respective Officers and Clerks of the said respective Courts shall likewise, before the last Day of the Term of *Saint Michael* also next coming, and in every *Michaelmas* Term after, make, or cause to be made, as aforesaid, the like Dogget, containing all such Judgments in the said respective Courts, of the respective Terms of *Easter* and *Trinity* then last past, and the Names of the Plaintiffs and Defendants, Titles and Additions, Debt and Damages, in all Things as aforesaid; and also that the said respective Officers and Clerks of the said respective Courts shall likewise, before the last

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Actions may proceed, notwithstanding the Death of one of the Parties.

VII. And be it further enacted by the Authority aforesaid, That if there be two or more Plaintiffs or Defendants, and one or more of them should die, if the Cause of such Action shall survive to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the Writ or Action shall not be thereby abated; but such Death being suggested upon the Record, the Action shall proceed at the Suit of the surviving Plaintiff or Plaintiffs against the surviving Defendant or Defendants. (3.)

In Actions on Bonds, &c. Plaintiff may assign as many Breaches as he pleases.

VIII. And be it further enacted, That in all Actions, which from and after the said five and twentieth Day of *March*, one thousand six hundred ninety and seven, shall be commenced or prosecuted in any of his Majesty's Courts of Record, upon any Bond or Bonds, or on any Penal Sum, for Nonperformance of any Covenants or Agreements in any Indenture, Deed, or Writing contained, the Plaintiff or Plaintiffs may assign as many Breaches as he or they shall think fit, and the Jury, upon Trial of such Action or Actions, shall and may assess, not only such Damages and Costs of Suit as have heretofore been usually done in such Cases, but also Damages for such of the said Breaches so to be assigned, as the Plaintiff upon the Trial of the Issues shall prove to have been broken, and that the like Judgement shall be entred on such Verdict as heretofore hath been usually done in such like Actions; and if Judgement shall be given for the Plaintiff on a Demurrer, or by Confession, or *Nihil dicit*, the Plaintiff upon the Roll may suggest as many Breaches of the Covenants and Agreements as he shall think fit, (4.) upon which shall issue a Writ to the Sheriff of that County where the Action shall be brought, to summon a Jury to appear before the Justices or Justice of Assise, or *Nisi prius*, of that County, to enquire of the Truth of every one of those Breaches, and to assess the Damages that the Plaintiff shall have sustained thereby; in which Writ it shall be commanded to the said Justices or Justice of Assize,

Jury may assess Damages.

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Return of it, a *Procedendo* was awarded; because by this Statute the Plaintiff may have a *Scire facias* against the Executors, and proceed to Judgment, which he cannot have in another Court, and by this Means he would be deprived of the Judgment; which would be unreasonable; 1 Salk. 352; Tidd, Ch. 17.

(3.) If the Death happen before Issue joined, it should be suggested on making up the Issue, but otherwise it need not be suggested till the Plea Roll is made up; 1 Bur. 363. And where one of two Plaintiffs died before the interlocutory Judgment, and the Suit notwithstanding went on to Execution in the Name of both; on a Motion to set aside the Proceedings for this Irregularity, the Court permitted the surviving Plaintiff to suggest the Death of the other in the Roll, and to amend the *Ca. sa.* without Payment of Costs; 5 T. R. 577. But as no new Person is introduced, there is no Occasion for a *Scire facias* in those Cases to revive the Judgment; Tidd, Ch. 42.

(4.) In the following Passage (extracted from a general Dissertation on the Law of Penal Obligations, inserted in the Appendix to the Translation of Pothier,) it is attempted to take a general View of the Law respecting the Relief given against a Penalty, both in the Construction of this Statute and in the Practice of Courts of Equity, and of the Principles which seem fairly applicable to the Stipulation of a particular Compensation by way of Penalty

or *Nisi prius*, that he or they shall make Return thereof to the Court from whence the same shall issue, at the Time in such Writ mentioned; and in case the Defendant or Defend- No. 21. 8 and 9 William III. c. 11.

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or Damages. The Freedom of Observation indulged with respect to the Judgment of one of the most distinguished Magistrates who ever adorned the judicial Tribunals of the Country, may probably be thought to require an Apology; but I hope that such Apology will be offered in the wish to subject the Justice of the Observations commented upon to a fair Examination, according to their intrinsic Force and Justice, without being diverted from that Pursuit by the merited Eminence of the illustrious Person from whom they proceeded.

"The Effect of penal Obligations is, according to the Jurisprudence of this Country, circumscribed within much narrower Limits than their literal Import. With respect to the Interposition of Courts of Equity, Lord Thurlow stated, in the Case of Sloman *v.* Walter, 1 Bro. 418, that the Rule that where a Penalty is inserted merely to secure the Enjoyment of a collateral Object, the Enjoyment of the Object is considered as the principal Intent of the Deed, and the Penalty only as accessional, and therefore, only to secure the Damage really incurred, was too strongly established in Equity to be shaken. In the particular Case it was agreed, that a Partnership should be conducted entirely by one of the Partners; but that the other should have the Enjoyment of a particular Room whenever he thought proper; and a Bond being given to enforce the Agreement, his Lordship seems to have been of Opinion, that the Case was within the Rule, as he continued the Injunction to the Hearing. The following are some of the Cases which had previously been decided upon this Subject:—Sale gave a Bond to Ryland in £20, not to disparage his Trade, and afterwards seeing a Customer of Ryland's cheapening a Parcel of Flounders, he said to him, "Why would you buy of Ryland? those Fish stink." Ryland put the Bond in Suit, and had a Verdict: and it was held that Equity would not relieve, because of the Smallness of the Sum; but the Lord Keeper said, it would be otherwise were the Penalty greater, as £100, or upwards; 1 Cham. 183; 1 Eq. Ab. 91.

On the Sale of an Estate, it was agreed that the Purchaser should retain £400 for two Years, without Interest; and if the Wife of the Seller in that Time released her Dower, he was to pay the £400, or else retain it absolutely. The Seller having died, his Widow did not release her Dower, but brought a Writ of Dower, and died before the Recovery of it. A Bill was filed for the £400, because it was but in the Nature of the Penalty to secure against the Dower, which was then at an End, and the Purchaser was secured as well as if she had released within the two Years, or after the two Years had expired; in which Case, as it was said, the Court would certainly have relieved. On the other Side, it was said, that this was not in the Nature of the Penalty, but the Term of the Agreement, and the Measure of the Satisfaction for the contingent Incumbrance of Dower; and that the Court would not have relieved on her Release, much less when she was so far from releasing that she brought her Writ of Dower, and if she had recovered it, and lived several Years, the Purchaser could have had only the £400; and as he run the Hazard of her living, he ought to have the Advantage of her dying; and of this Opinion was the Lord Chancellor, and decreed accordingly; Small *v.* Lord Fitzwilliam, Prec. Chan. 102.

In Aylet *v.* Dodd, 2 Atkins, 238, and several other Cases, it was laid down by Lord Hardwicke, that where there is a Clause of *Nomine Pœnæ* in a Lease to a Tenant, to prevent his breaking up and ploughing old Pasture Ground, the Intention is to give the Landlord some Compensation for the Damage he has sustained, and therefore, in that Case, the whole *Nomine Pœnæ* shall be paid. And in Rolfe *v.* Peterson, 6 Brown, P. C. 460 (2d. Vol. 436, last Edit.) the Tenant covenanted, that in case any Part of the Premises, that had not been in Tillage within twenty Years, should be converted into Tillage, he would, for the Remainder of the Term, pay the further yearly Rent of £5 for every Acre so converted; the Tenant having converted into Tillage a Parcel of Land before covered with Furze, and an Action being brought against him for this, and other Breaches of Covenant, and £300 Damages being recovered upon a Judgment by Default, Lord Cam-

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Defendant paying Damages, Execution may be stayed,

ants after such Judgement entred, and before any Execution executed, shall pay unto the Court where the Action shall be brought, to the Use of the Plaintiff or Plaintiffs, or his or their Executors or Administrators, such Damages so to be assessed by reason of all or any of the Breaches of such Covenants, together with the Costs of Suit, a Stay of Execution of the

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den directed an Issue *quantum damnificatus*, ordering that the Damages upon each Breach of Covenant should be found separately. Upon Appeal to the House of Lords, in Opposition to the Argument, that the Damages were increased to so high a Sum by Means of the Covenant to pay the increased Rent, which was to be considered as a Penalty, and that the Court of Equity could relieve against it, it was said that this was not a Penalty, but a liquidated Satisfaction, fixed and agreed upon between the Parties, and was reserved as an additional Rent; whereas a Penalty is a Forfeiture for the better enforcing a Prohibition, or a Security for the doing some collateral Act. On the other Side it was said, that these rigorous Covenants, though seemingly made for the Preservation of Estates, are in Effect a new Mode of raising Rents, more oppressive than the Proceeding by Ejectment, and are not in the Nature of a Contract, but of a Penalty of vindictive Damages; and therefore ought to receive no Countenance in Equity, as the Penalty thereby reserved frequently exceeds the Value of the Inheritance. But the Decree was reversed.

A Lease for Lives was made at the yearly Rent of £125, with a Clause, that if the Tenant and his Heirs, with all their Family, did not live on the Premises during the Continuance of the Lease, the Rent should be raised to £150. An Action at Law having been commenced upon this Clause, the Court of Exchequer in Ireland granted an Injunction; upon Appeal to the House of Lords it was argued in Support of the Decree, that the Covenant being inserted only for the Sake of Improvement, and to secure the Rent reserved, the same had been substantially performed, and the Design thereof answered; for it was admitted, that the Lands were kept well stocked with more than sufficient to answer the Rent; but the Decree was reversed; Ponsonby *v.* Adams, 6 Br. P. C. 407, (last Edit.) 2 Vol. 431.)

In Roy *v.* Duke of Beaufort, 2 Atkins, 190, the Plaintiff and his Son, while the Son was in Custody on the Information of the Duke's Gamekeeper, for carrying a Gun, gave a Bond, that the Son should not commit any Trespass in the Duke's Royalties, by Shooting, Hunting, Fishing, &c. unless with the Licence of the Gamekeeper, or in Company with a qualified Person. The Son having caught two Flounders with an angling-rod, in Company with two Servants of the Duke, one of whom (a Brother-in-law of the Gamekeeper) invited him to go angling with them; the Bond was put in Suit, and a Verdict obtained on the Evidence of these Servants, for the Penalty, which, with £40 for Costs, the Plaintiff (his Son being dead) was obliged to pay. Upon a Bill filed by him for Relief, the following Questions were made: 1st., Whether the Bond was obtained by Oppression and Imposition? 2d., Whether it should be only considered as a Security that the Son should not poach for the future? 3d., Whether an ill Use had been made of the Bond? Lord Hardwicke, upon the first Question, expressed his Opinion in Favour of the Bond, and in the Course of it, observed, in Answer to an Argument that the Penalty was excessive, that to be sure the Penalty was a large one; but he did not know that Courts of Equity, where Bonds have been entered into voluntarily, have ever gone so far as to take into their Consideration the Greatness or the Smallness of the Penalty: he should be extremely cautious how he gave an Opinion that would set aside such Bonds, which, if rightly used, might be of great Service in the Preservation of the Game, and an equal Benefit to the Obligors themselves, by taking them out of an idle Course of Life, which Poaching naturally leads them into. As to the Head of Security, he said, that it was most absurd, to think that Bonds of this Kind were intended merely as a Security, and that nothing was to be recovered upon them. He was of Opinion, that when these Kinds of Bonds were given by way of stated Damages between the Parties, it was unreasonable to imagine, that they could only be intended as a bare Security that the Obligor should not offend for the Future. "Was this the Case, (he said) in

said Judgement shall be entred upon Record; or if by reason of any Execution executed, the Plaintiff or Plaintiffs, or his or their Executors or Administrators, shall be fully paid or satis- No. 21. 8 and 9 William III. c. 11.

what respect is a Gentleman, who has taken such a Bond, in a better Condition than he was before, if, after he has obtained Judgment at Law, a Court of Equity will give him no other Satisfaction than the bare Value of the Price of the Game that is killed?" Upon the third Point, he observed, that from the Year 1729, when the Bond was given, no Evidence was offered of the Son poaching until 1732 (*a*); and after killing these Flounders, it rests two Years, and no Action is brought (*b*); afterwards, the Plaintiff in Equity was a Witness against the two Servants for a Riot, and they were convicted chiefly on his Evidence. It is a very material Circumstance, that the Son had a licence (*c*), or at least an Encouragement, to fish, by being in Company with two of the Duke's Servants (*d*) (one of whom was Brother-in-Law to the Gamekeeper) (*e*). It frequently happens, that there may be a just Cause of Action, yet the real Motives may be very unjust, which a Court of Equity will always take into their Consideration, though they cannot at Law pay any Regard to it (*f*). It appears, that the Gamekeeper, who had the Authority of the Duke, who has been a Witness to the Transaction of the Bond (*g*), gave a Licence, or at least an Encouragement (*h*), to this Fshing, which, as it was with an Angling-rod only, cannot be called Poaching, nor was it ever so esteemed (*i*). In such a Tract of time as two Years, it is impossible to sup-

(*a*) Would not such Evidence have been irrelevant? Atkins does not state the Proceedings at Law, but from the Nature of the Thing, there must have been a Plea, alleging that the Son had not trespassed contrary to the Condition of the Bond, to which the Replication must have answered, with stating a particular Trespass. To have stated more Trespasses than one, would have been bad, as being multifarious, except as to the Effect of the Statute of William, which had not at that Time been applied to such Bonds as these, and which is not at all adverted to; and as one only was alleged, one only could be proved. If the Son the Minute after giving the Bond had shot a Partridge before the Duke's Face, would not this have been a Breach against the full Intention of the Bond? But what Distinction can reasonably be made, as a Matter of legal Inquiry, between one Time and another, when there is no Distinction by the Contract itself?

(*b*) If a Right of Action once attached, in how short a Space of Time was it requisite that the Action should be brought, so as it was not barred by any Statute of Limitations?

(*c*) This is quite out of the Question.

(*d*) Can a Man's legal Right be prejudiced by his Servant having, without his Authority, concurred in the Violation of it?

(*e*) What Difference does this make?

(*f*) This appears to be a most dangerous Doctrine. Where a Man has a legal Right, the Motives which induce him to exercise that Right, or to forbear from the Exercise of it, must rest with himself. If he forbears the Exercise of it, the Duration of such Forbearance is also a Matter of Discretion, until the Law has allowed it to operate as a Bar. If a Sentiment of personal Disapprobation is a sufficient Warrant for a Court of Equity to defeat the Exercise of a legal Right, the Discretion assumed under this Pretence will be so illimitable, as to eradicate all the Principles of juridical Certainty. If up to and at the Time of the Plaintiff giving Evidence against the Servants, (who, by the bye, probably did not, until that Time, divulge the Circumstance) the Duke had a Right of Action which a Court of Equity would not controul him in the Exercise of, that Right could not be defeated by such a Circumstance taking place.

(*g*) What then?

(*h*) Gave a Licence, that is, did not give a Licence, but gave an Encouragement; the Meaning of which does not appear, except as it may be inferred from what follows, that he probably would; therefore, that he actually did know of the Circumstance within two Years afterwards.

(*i*) The Word Poaching does not occur in the Condition of the Bond; but if he shall *trespass by Fishing*, the Obligation shall be in Force. The Act against stealing Fish is held to extend to Angling.

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8 and 9 William III. c. 11. their Costs of Suit, and all reasonable Charges and Expences for executing the said Execution, the Body, Lands, or Goods

pose that the Gamekeeper could be ignorant of this Fishing, especially as his own Brother-in-law was in the Company (*a*).

"According to the Condition of this Bond, the Plaintiff could not be relieved at Law, because his Son could not fish without express Leave from the Gamekeeper, or in presence of a qualified Person, so that if the Duke of Beaufort himself (*b*) had given Leave, there must at Law have been a Verdict, because it is not within the express Terms of the Condition of the Bond.

"Now when a Man has made this moderate Use of his Liberty (*c*) of fishing, and manifestly appears to have had Leave, it would be hard not to relieve against the Penalty recovered upon this Bond at Law."

The third Point in the preceding Case, though not immediately referable to the Course of the present Discussion, is inserted to shew the real Ground upon which the Case was determined; a Ground that appears to me to be in every respect untenable, and which I have commented upon in the Notes with a Freedom which may perhaps be regarded as Arrogance, but which I must always assert as the Privilege of a Writer, who wishes to extend his Enquiries beyond the mere Collection of Authorities, and to investigate the Principles of his Subject (*d*).

Upon the second Point, I conceive the Opinion of the eminent Magistrate to be founded upon the most correct Principles of juridical Reason; and I am persuaded, that if these Principles had been more extensively acted upon than they have been, the true Object of Penal Obligations would have been more effectually promoted. If the Penalties had been allowed to Operate really *in Terrorem*, by being actually levied, when legally incurred, Agreements would be more faithfully performed, from a Terror of the Consequences of their Infraction; but the scarecrow Doctrine of Penalties being stipulated, merely *in Terrorem*, whilst they are known to have no efficient Power, is little more than a trifling with Language. No Penalty

(*a*) Is there any Presumption *Juris et de Jure*, that a Man is cognizant of every Act done in the Presence of all his Brothers-in-law; and to what further Degrees of Relationship is the Principle to be carried?

(*b*) Here another Principle would apply to prevent a Person taking Advantage of a Penalty incurred by his own Act or Consent; but that is a Principle totally inapplicable to the present Question. The Condition might have been made general, without including an Exception of the Consent of the Gamekeeper. When a particular Exception is introduced, referable to one Case, it is not the Province of Courts of Justice to create a more extensive Exception not contemplated by the contracting Parties.

(*c*) What Liberty? What Leave? He either had Leave from the Gamekeeper, or he had not. If he had, it was a Defence at Law, but the whole Case assumes that he had not, and that the Bond was legally forfeited.

(*d*) The general Doctrine of preventing an ill Use being made of a Bond is properly applicable to a Subject of a different Nature, and is principally instanced in the Case of general Bonds of Resignation, which, when they were allowed to be valid in Point of Law, were prevented by Courts of Equity from being made the Cover of Simony; and, in any other Case, a Court would prevent a legal Contract from being used as the Engine of an illegal Purpose. That Lord Hardwicke should, from a Sentiment of Disapprobation of the Conduct of the Duke of Beaufort, have resorted to such Reasoning as has been stated, would seem a Caution against looking in legal Proceedings at any other Object than the true legal Grounds of judicial Determination. An Objection, which might have deserved some Attention in the principal Case, viz. that the Contract was repugnant to a Principle of Law, inasmuch as it was made by way of Composition for dropping a criminal Prosecution, was not made a Point in the Case (except as connected with the adventitious Circumstance of Oppression). The Decisions in subsequent Cases would give considerable Weight to such an Objection, if the Question should hereafter arise.

of the Defendant, shall be thereupon forthwith discharged from the said Execution, which shall likewise be entred upon Record; but notwithstanding in each Case such Judgement shall remain, continue, and be, as a further Security to answer to the Plaintiff or Plaintiffs, and his or their Executors or Ad- No. 21. 8 and 9 William III. c. 11. but Judgment to remain, to answer any further Breach, &c.

is requisite to render a Person liable to the Damages which may be proved to have arisen from the Non-performance of his Agreements, but by a real Liability to an actual Penalty, such Non-performance will commonly be prevented.

In the following Case, a Bond was given by the Plaintiff to the Defendant, who was a Hair-merchant, as a Security for his Service and Behaviour in Flanders, as an Agent for the Defendant in buying Hair there; the Plaintiff was to stay Abroad till a certain Season, and as a Security for his Performance of the Agreement he deposited £100 in the Hands of the Defendant. The Plaintiff bought but £5 worth of Hair for the Defendant, and returned to England before the Time agreed between them; and brought a Bill for £50, agreed to be paid for his Trouble, and also for the Deposit. It was insisted for the Defendant, that this was a Breach of the Plaintiff's Duty, and a Forfeiture of the Bond, and that the Defendant had a Right to retain the £100, in Satisfaction of the Penalty, and that the Court would not relieve against it, for it was the stated Damages between the Parties, and the Counsel cited the above Case of the Duke of Beaufort, and likewise compared it to the Case of *Nomine Pœnæ* in Leases. The Lord Chancellor said, he could not decree this Penalty, because it was a Bond for Services only, and different from the Cases of a *Nomine Pœnæ* in Leases, to prevent a Tenant from ploughing, because that was stated Damages between the Parties. Nor was it like the Case of Bonds given as a Security not to defraud the Revenue, because there, where a Person is guilty of a Breach, it was considered as a Crime, and the Court of Chancery would not relieve for that Reason. Here he could not decree the Penalty, but must decree an Action at Law, upon a *quantum damnificatus*, to try how far the Defendant had been damnified by the Plaintiff's Non-performance of his Service; Benson *v.* Gibson, 3 Atk. 395. (*a*)

In the Case of Hardy *v.* Martin, 1 Bro. c. 418. n. one Partner, on retiring from Business, gave a Bond of £600 to the other, not to carry on the same Business within certain Limits; and after a Verdict at Law for the Penalty, the Court of Chancery granted an Injunction to stay Execution, and directed an Issue to take an Account of the Damage actually sustained.

In case of a Penalty for Non-performance of Covenants or Agreements, the Courts of Equity, in like Manner, exercised a Jurisdiction of restraining the

(*a*) There seems to be an Inaccuracy in the Phrase that the Court could not decree the Penalty, because that Expression would be rather applicable to a Suit by the Obligee to enforce the Penalty, than to one by the Obligor to be relieved from it; but this Inaccuracy is more probably imputable to the Reporter than to the Lord Chancellor; as to the Propriety of the Decision, though there is not a Similarity of Circumstances to the Cases mentioned, there does not appear to be any necessary Opposition of Principle; and it is impossible to suppose that the Intention of the Employer, in requiring the Deposit, was any other than that it should be retained in case of the Agent's Infraction of his Duty. In these Cases the Injury which can be manifested by Evidence to a Jury, is almost necessarily much less than that which is actually experienced by the Party.

When the Courts adopted the Principle above cited, that if a Penalty is merely inserted to secure the Enjoyment of a collateral Object, the Enjoyment of the Object is considered as the principal Effect of the Deed; if they had gone on to ask themselves, how that Effect would be most fully obtained? they would have probably found the Answer to be, an Enforcement of the Penalty when that Enjoyment was wilfully withheld.

The distinct Enunciation of the above Principle in the Case of Sloman *v.* Walter, induced me to mention that Case before the others upon the same Subject, which are anterior to it in point of Time.

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ministrators, such Damages as shall or may be sustained for further Breach of any Covenant or Covenants in the same Indenture, Deed, or Writing contained, upon which the Plain-

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Recovery, to the Amount of Damage assessed by a Jury. At Common Law, the Rules of Pleading, which require Issues to be taken upon a single Point in general, confined the Plaintiff to state a single Breach of the Agreement, for the Performance of which the Penalty was stipulated; but this Restriction did not exist in Cases where the Breach of the Agreement was stated in the Declaration, in which the Plaintiff may allege his Complaint as extensively as he finds convenient.

By Stat. 8 and 9 W. c. 11. it is enacted, that in all Actions in any Court of Record, upon any Bond, or any penal Sum, for Non-performance of any Covenants or Agreements, contained in any Indenture, Deed, or Writing, the Plaintiff may assign as many Breaches as he thinks fit, and the Jury shall assess Damages upon such Breaches as the Plaintiff shall prove to have been broken; and if Judgment shall be given for the Plaintiff on *Demurrer*, or Confession, or by *nil dicit*, the Plaintiff may suggest upon the Roll as many Breaches as he shall think fit, upon which a Writ shall issue to the Sheriff to summon a Jury before the Justices of Assize, to enquire of the Truth of those Breaches, and to assess the Damages; and upon Payment of such Damages with the Costs, Execution shall be stayed; but the Judgment shall remain as a Security, to answer for any Damages to be afterwards sustained by any future Breach.

The natural Construction of this Act does not seem to apply to Bonds, with a Condition to do or not to do any given Act, without there being any other distinct Agreement, that such Act shall be done: but in Collins *v.* Collins, 2 Bur 824. above cited, where the Condition of a Bond was that the Defendant should pay an Annuity to the Plaintiff, and should also maintain him, Lord Mansfield said, "This is an Agreement between the Parties, and an Agreement in Writing; the Condition of the Bond is an Agreement in Writing, and People have frequently gone into Courts of Equity upon Conditions of Bonds as being Agreements in Writing, to have a specific Performance." I cannot help thinking that there is more Ingenuity than Solidity in this Reasoning; for though in Equity the Condition of a Bond is regarded *as Evidence of* an Agreement, that the Act referred to shall be done, such Conditions are not regarded as Agreements at Law, and cannot be declared upon as such; and where there was another Subject to which the Words of the Statute were naturally applicable, it would have been as well to avoid extending the Operation of it to a Case, that does not naturally present itself to the Mind, as being in the View of the Legislature, and to which the Words can only be applied by a forced and foreign Construction. It is however settled, in Conformity with the above Opinion, that the Statute extends generally to all Bonds for the Performance of any Condition; Walcot *v.* Goulding 8 T. R. 124. A Bond to the Lord Chancellor, pursuant to Stat. 5 Geo. II. c. 30, upon taking out a Commission of Bankrupt, is not within the Act; Smithey *v.* Edmonson, 3 East, 22.

It is now also settled that the Act is compulsory, and that the Plaintiff is not at Liberty to proceed for the Penalty as at common Law, although there have been Decisions, and there seems to have been a tacit Practice the other Way (*a*.) Drage *v.* Brand, 2 Wils. 377, Goodwin *v.* Crowle, Cowp. 357. Hardy *v.* Bern, 5 T. R. 636. In the last Case, Lord Kenyon, and Mr. Justice Buller, certified their Opinion in Writing to the Lord Chancellor, upon a Writ of Error from a Judgment of the Exchequer; they stated that it was apparent to them, that the Law was made in favour of Defendants, and was highly remedial, calculated to give Plaintiffs Relief up to the Extent of the Damage sustained, and to protect Defendants against the Payment of further Sums than what was in Conscience due, and also to take away the Necessity of Proceedings in Equity, to obtain Relief against an unconscientious Demand of the whole Penalty, in cases where small Damages only had accrued (*b*). See also Roles *v.* Rosewell, 5 T. R. 540.

(*a*) See Bird *v.* Randall, post.

(*b*) The Act is penned in a most careless Manner, but I think that this is evidently the true Construction of it upon the Point in Question, and that

tiff or Plaintiffs may have a *Scire facias* upon the said Judgement against the Defendant, or against his Heir, Terre-Tenants, or his Executors or Administrators, suggesting other

No. 21. 8 and 9 William III. c. 11.

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But there are Cases where the Penalty stipulated by the Parties, can be the only true and proper Measure of Justice; and though there is a technical Distinction between a Penalty and stated Damages, to which I am about to proceed, I think it would be in general proper to regard the Penalty as stated Damages, unless there is some particular Reason in the Nature of the Contract to the contrary. Many Times Engagements are entered into upon Considerations, wholly arising out of the personal Feelings of the Parties. The Person making such Engagement of course acts under an adequate Inducement, and the Person who has given that Inducement ought not to be deprived of the full Security of an Object, the personal Importance of which can only be justly appreciated by himself. On the other Hand where a Bond is evidently a mere Bond of Indemnity from pecuniary Loss, the Extent of the Loss is the Extent of the Damages. In many Cases, the actual Damage which could be brought under the Contemplation of a Jury must be as nothing; and if the nominal Sum awarded in such Cases, was the only Consequence that could attach upon a Person violating his Engagement, the Sanction provided with a view to its real and efficient Security would be wholly frustrated. I shall have an Opportunity presently of referring more conveniently to a Case in which this Sentiment was judicially adopted.

In all the Cases above mentioned, where it was held that Equity could not relieve against the Sum agreed upon by the Parties, I conceive it may be taken for granted, that the Sum stipulated to be paid is the only proper Measure for the Decision of the Jury; and whether the Form of the Transaction is held to be a Penalty or stipulated Damages (the line of Discrimination between which is not very accurately marked,) the Sum so agreed is the Amount which ought to be recovered.

In the Case of Lowe *v.* Peers, 4 Burr. 2225, the Defendant promised the Plaintiff that he would not marry any Person besides herself, and that if he did, would pay her (the Plaintiff) £1000 (*a*) at the end of three Months. Lord Mansfield, after stating the Proceedings in the Cause, said, that the Jury had given £1000 Damages; and by Law and in Justice, the Defendant ought to pay the £1000. Money is the Measure of Value. Therefore what else could the Jury find but this £1000, (unless they had also given Interest after the three Months). This is not an Action brought against him for not marrying her, or for his marrying any one else; the Non-payment of the £1000 is the Ground of the Action. The Money was payable on a Contingency, and the Contingency has happened, therefore it ought to be paid. There is a Difference between Covenants in general, and Covenants secured by a Penalty or Forfeiture. In the latter Case the Obligee has his Election. He may either bring an Action of Debt for the Penalty, and recover the Penalty, after which Recovery of the Penalty he cannot resort to the Covenant, because the Penalty is to be a Satisfaction for the whole; or, if he does not choose to go for the Penalty, he may proceed upon the Penalty, and recover more or less than the Penalty, *toties quoties*. And upon this Distinction they proceed in Courts of Equity. They will relieve against a Penalty upon a Compensation; but where the Covenant is to pay a particular liquidated Sum,

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the Act is compulsory upon the Plaintiff as to assigning some Breach, but was discretionary merely as the Number of Breaches. In any other Point of View there would be a manifest Absurdity, in providing that the Plaintiff might assign as many Breaches as he pleased, upon Judgment on *Demurrer*, &c. and Damages should be assessed, &c.; for before that Time he might take his Judgment and Execution for the whole Penalty, without assigning any Breach at all; and giving him an Option to assign a Breach to enable him to recover a Part of the Penalty, instead of taking the Whole without having Recourse to that Proceeding, would not be productive of any extensive practical Consequence.

(*a*) The Promise was held to be void, but the Amount which ought to be recovered, supposing it to be good, was previously discussed, which perhaps was necessary in Regard to the Question of Costs.

No. 21. 8 and 9 William III, c. 11.

Breaches of the said Covenants or Agreements, and to summon him or them respectively to shew Cause why Execution shall not be had or awarded upon the said Judgment, upon which

a Court of Equity cannot make a new Covenant for a Man; nor is there any Room for Compensation or Relief, as in Leases containing a Covenant against ploughing up a Meadow: if the Covenant be not to plough, and there be a Penalty, a Court of Equity will relieve against the Penalty, *or will even go further than that*, to preserve the Substance of the Agreement; but if it is worded, to pay £5 an Acre, for every one ploughed up, there is no Alternative, no Relief against it, no Room for Compensation; it is the Substance of the Agreement. Here the specified Sum of £1000 is found in Damages (*a*); it is the particular liquidated Sum fixed and agreed upon between the Parties, and is therefore the proper Quantum of the Damages. It is clear that where the precise Sum is not the Essence of the Agreement, the Quantum of the Damages may be assessed by the Jury; but where the precise Sum is fixed and agreed upon between the Parties, that very Sum is the ascertained Damage, and the Jury are confined to it.—And the other Judges gave their Opinions to the same Effect.

Where Persons contracting for the Iron Work of a Building, agreed to perform it in six Weeks, and to pay £10 a Week afterwards until it was done, and gave a Bond in a Penalty for the Performance, it was held that the £10 a Week was in the Nature of liquidated Damages; and it was said by Mr. Justice Ashhurst, that the Object of the Parties in naming this Sum, was to prevent any Altercation concerning the Quantum of Damages, which might have been sustained by the Non-performance of the Contract. It would have been difficult for a Jury to have ascertained what Damages had really been suffered by the Breach of the Agreement; so that it was a Case of stipulated Damages, and was not to be considered as a Penalty. Mr. Justice Buller said, that when there is a Penalty in the Bond, it was strange that the Sum mentioned in the Condition should be called a Penalty; he did not know that there could be an equitable and a legal Penalty; but that was as strongly a Case of liquidated Damages as could possibly exist, and was like the Case of Demurrage. In either Case it is impossible to ascertain what the Damages are, and the Parties agree to pay a stipulated Sum. Fletcher *v.* Dyke, 2. T. R. 32.

In Astley *v.* Weldon, 2 Bos. 346. the Defendant engaged to perform at the Plaintiff's Theatre for a certain Time, and to attend Performances and Rehearsals, or subject herself to the Fines established at the Theatre. [There were also several Agreements on the Part of the Plaintiff. "And it was agreed between the Parties, that either of them neglecting to perform the Agreement should pay to the other £200." The Plaintiff brought an Action against the Defendant, for refusing to perform, and for wholly withdrawing from the Theatre; and the Declaration concluded, with stating that by Reason thereof she became liable to pay the Sum of £200 in the Articles mentioned. It being proved that the Agreement was broke by the Defendant absenting herself, and Evidence having been given that by the Regulations of the Theatre, the Performers were subject to certain small Fines for Inebriety, late Attendance, &c. a Verdict was found for the Plaintiff with £20 Damages, with Liberty for the Plaintiff to enter a Verdict for £200 Damages, if the Court should be of Opinion that the Sum mentioned in the Agreement, was to be considered in the Nature of liquidated Damages. After Argument, it was held that the Question of Damages was properly left to the Jury. Lord Eldon said, that when the Cause came before him at *Nisi prius*, he felt, as he had often done before in considering the various Cases on this head, much embarrassed in ascertaining the Principle upon which those Cases were founded; but it appeared to him that the Articles in this Case, furnished a more satisfactory Ground, for determining whether the Sum of Money therein mentioned ought to be considered in the Nature of a Penalty or of liquidated Damages, than most

(*a*) His Lordship at the Trial directed the Jury to find for the Plaintiff with 1000*l.* Damages, *if they thought the deed a good one.* This last, by the bye, was rather an odd Point to leave to a Jury.

there shall be the like Proceeding as was in the Action of Debt upon the said Bond or Obligation, for assessing of Damages upon Trial of Issues joined upon such Breaches, or

No. 21. 8 and 9 William III. c. 11.

others which he had met with; what was urged in the Course of the Argument had ever appeared to him to be the clearest Principle, viz. that where a Doubt is stated whether the Sum inserted be intended as a Penalty or not, if a certain Damage less than that Sum is made payable upon the Face of the same Instrument, in case the Act intended to be prohibited be done, that Sum shall be construed a Penalty. The Case of Sloman v. Walter, did not stand in need of this Principle; for there, by the very Form of the Instrument, the Sum appeared to be a Penalty, in which Case a Court of Equity could never consider it as liquidated Damages, but must direct an Issue of *quantum damnificatus*. A Principle has been said to have been stated in several Cases, the Adoption of which one cannot but lament, namely, that if the Sum would be very enormous and excessive, considered as liquidated Damages, it shall be taken to be a Penalty, though agreed to be paid in the Form of Contract. This has been said to have been stated in Rolfe v. Peterson, where the Tenant was restrained from stubbing up Timber. But nothing can be more obvious than that a Person may set an extraordinary Value upon a particular Piece of Land or Wood, on account of the Amusement which it may afford him. In this Country a Man has a Right to secure to himself a Property in his Amusements, and if he choose to stipulate for £5 or £50 additional Rent upon every Acre of Furze broken up, or for any given Sum of Money upon every Load of Wood cut and stubbed up, he saw nothing irrational in such a Contract; and it appeared to him extremely difficult to apply with Propriety the Word "excessive," to the Terms in which Parties choose to contract with each other. His Lordship made some Observations upon the preceding Cases on this Subject, and said that with respect to Hardy v. Martin, he did not understand why one Tradesman, who purchases the Good-will of a Shop from another, may not make it a matter of Agreement, that if the Vendor trade in the same Article within a certain Distance, he shall pay £600, and why the Party violating such Agreement should not be bound to pay the Sum agreed for; though if such Agreement were entered into in the form of a Bond, with a Penalty, it might perhaps make a Difference (a). In his Observations upon the particular Case, his Lordship referred to the pecuniary Payments agreed to be made by the Plaintiff, and also to the small Fines, which, according to the Regulations of the Theatre, were to be paid by the Defendant; inferring that in these Cases the Sum of 200*l.* was only to be regarded as a Security for the stipulated Payments; and that there was not any ground for distinguishing between these and the other parts of the Agreement. Mr. Justice Heath, in the Course of his Opinion said; it was very difficult to lay down any general Principle in Cases of this kind; but he thought there was one which might safely be stated; that where Articles contain Covenants for the Performance of several Things, and then one large Sum is stated at the End to be paid upon Breach of Performance, that must be considered as a Penalty; but where it is agreed that if a Party do such a particular Thing, such a Sum shall be paid by him, there the Sum stated is treated as liquidated Damages. Mr. Justice Chambre said, that though in Point of Form the Action was for Damages, yet if the Parties are to be considered as having stipulated for certain Damages, the Jury ought to be directed to find Damages, to the Amount of the whole Sum so agreed for, and the Effect of the Case must have been the same, as if the Plaintiff had declared in Debt for a penal

(a) If such was admitted to be the real Intention of the Parties, there can be no Foundation for a Court of Equity, whose peculiar Province is to preserve and maintain the Substance of Transactions, to subvert both Form and Substance, in a Manner which renders the Transaction itself wholly nugatory. The Damage which can be actually proved in such Case as this must in general be nothing, because it is very difficult to shew that the Profit received by the one, would in particular Cases have otherwise fallen to the other; but the real Injury sustained by continuing the Trade in Violation of the Agreement, may at the same Time incalculably exceed the stipulated Penalty.

No. 21.
8 and 9 William III. c. 11.

Inquiry thereof upon a Writ to be awarded in Manner as aforesaid; and that upon Payment or Satisfaction in Manner as aforesaid, of such future Damages, Costs, and Charges, as aforesaid, all further Proceedings on the said Judgment are again to be stayed, and so *toties quoties*, and the Defendant, his Body, Lands, or Goods, shall be discharged out of Execution, as aforesaid. (5.)

Sum. After taking Notice of some of the Decisions above cited, he said, there is one Case in which the Sum agreed for must always be considered as a Penalty, and that is, where the Payment of a smaller Sum is secured by a larger: in this Case, it is impossible to garble the Covenants, and to hold that in one Case the Plaintiff shall only recover for the Damages actually sustained; and in another, that he shall recover the Penalty; the concluding Clause applies equally to all the Covenants. With respect to the Case of Hardy *v.* Martin, in which he was concerned, Lord Mansfield, upon the Trial at I inclined to think it a Case of stipulated Damages: though it appeared by the printed Report, that it was considered otherwise in a Court of Equity (*a*).

In Legh *v.* Lewis, a Bond was given by the Defendant to the Plaintiff in £400, to resign the Situation of Master of a School at Knutsford, upon the Plaintiff's request; the Validity of this Bond was established upon Demurrer, by the Court of King's Bench, 1 East, 391. The Case afterwards came on at Chester Assizes for an Inquiry of Damages: on the one Hand, it was contended that as the Plaintiff had not any personal Interest, the Damages should be merely nominal; on the other Hand, that they ought to be given for the entire Penalty. Mr. Mansfield, and Mr. Burton, the Justices of Chester, supported this latter Opinion in a very elaborate Discussion of the Subject, and the Damages were found accordingly; the Judges considering that it was the Intention of the Parties, that an actual Liability to the Penalty should operate as a Sanction, for the Performance of the primary Obligation to resign. (*b*)

From the above Series of Cases which I have cited, at much greater Length than is consistent with my general Plan, it is obviously no easy Matter to determine, in what Cases the Sanction, intended by the Parties to enforce the Performance of their Engagements, shall or shall not be permitted to take Effect. But in framing an Instrument for this Purpose, I think the best Way will be to express the Condition or Engagement, in Terms declaring "that the Party shall do, or not to do the Act intended, or in Default thereof shall pay the Sum of ——— *as and for stipulated Damages, for the same*;" and also to insert as a Penalty, a larger Sum than that agreed to be payable as stipulated Damages: and in case it is intended that the Party making Default shall be liable to pay a certain stipulated Sum, but that the other shall not lose his Right to general Damages, to add, "and such further Damages as the said ——— shall in that Behalf sustain;" or otherwise to add a Proviso, "that the Damages above stipulated shall not prejudice the Right of the said ——— to sue for any other or greater Damages, for and on Account of the Non-performance of the Agreement."

(5.) As to the Mode of proceeding in assigning Breaches, see Williams's Notes to 1 Saund. 58, 2 Saund. 157; Plomer *v.* Ross, 1 Marshall, 95; Johnes *v.* Johnes, 2 Dow. P. C. 1; Kinnersley *v.* Mussen, 5 Taunt. 264.

(*a*) This Case would regularly come before Lord Mansfield a second time, upon the Issue directed by the Court of Chancery, and perhaps it was upon that Occasion that he expressed the Opinion alluded to: for a Direction to the Jury that they had no other Guide, than the Penalty in the Bond would certainly be more proper and judicious than any other.

(*b*) I regret that I am not able to furnish a more full Account of a Judgment from the good Sense and Learning of which I received peculiar Gratification, at the Time of its being pronounced, than the following very short Note by Mr. Wigley, (who was a Counsel in the Cause) of the Opinion of Mr. Mansfield. "Here the Defendant is to resign; this is the Object of the Bond to compel a Resignation. What else but the Penalty can possibly be the Measure of Damages? If this is not the Measure of Damages, the Bond is a Farce. The Plaintiff, to be sure, might make the Defendant pay Costs; but my Opinion is, that if he is intitled to recover any Thing, it is the Whole?"

## No. 22.

8 and 9 William III. c. 27. — An Act for the more effectual Relief of Creditors in Cases of Escapes, and for preventing Abuses in Prisons and pretended privileged Places. P.

No. 22. 8 and 9 William III. c. 27.

VII. AND be it further enacted and declared by the Authority aforesaid, That if at any Time after the said first Day of *May*, any Prisoner who is or shall be committed in Execution to either or any of the said respective Prisons, shall escape from thence by any Ways or Means howsoever, the Creditor or Creditors, at whose Suit such Prisoner was charged in Execution at the Time of his Escape, shall or may retake such Prisoner by any new *Capias*, or *Capias ad satisfaciendum*, or sue forth any other Kind of Execution on the Judgement, as if the Body of such Prisoner had never been taken in Execution.

Prisoner in Execution escaping, may be retaken by any new Capias.

VIII. And be it further enacted by the Authority aforesaid, That if the said Marshal or Warden for the Time being, or their respective Deputy or Deputies, or other Keeper or Keepers of any other Prison or Prisons, shall, after one Day's Notice in Writing given for that Purpose, refuse to shew any Prisoner committed in Execution to the Creditor at whose Suit such Prisoner was committed or charged, or to his Attorney, every such Refusal shall be adjudged to be an Escape in Law.

Keeper refusing to shew Prisoner, it shall be an Escape.

[*See the Act at length, ante. Class III. No.* 17.]

## No. 23.

8 Anne, c. 14.—An Act for the better Security of Rents, and to prevent Frauds committed by Tenants. P.

No. 23. 8 Anne, c. 14.

II. AND be it further enacted by the Authority aforesaid, That in case any Lessee for Life or Lives, Term of Years, at Will or otherwise, of any Messuages, Lands, or Tenements, upon the Demise whereof any Rents are or shall be reserved, or made payable, shall, from and after the said first Day of *May*, fraudulently or clandestinely convey or carry off or from such demised Premises, his Goods or Chattels, with Intent to prevent the Landlord or Lessor, from distraining the same for Arrears of such Rent so reserved as aforesaid, it shall and may be lawful to and for such Lessor or Landlord, or any Person or Persons by him for that Purpose lawfully impowered, within the Space of five Days next ensuing such conveying away or carrying off such Goods or Chattels as aforesaid, to take and seize such Goods and Chattels wherever the same shall be found as a Distress for the said Arrears of such Rent; and the same to sell or otherwise dispose of, in such Manner, as if the said Goods and Chattels had actually been distrained by such Lessor or Landlord, in

If any Lessee, &c. shall fraudulently carry off Goods, &c. the Lessor, &c. may within five Days after seize such Goods, &c. and sell the same as if they had been distrained.

No. 23.
8 Anne, c. 14

and upon such demised Premises for such Arrears of Rent; any Law, Custom, or Usage to the contrary in any wise notwithstanding. * *

[*See the Act at length, post. Title* Distress, Replevin, &c.]

## No. 24.

P. 3 George I. c. 15.—An Act for the better regulating the Office of Sheriffs, and for ascertaining their Fees, and the Fees for suing out their Patents, and passing their Accounts.

No. 24.
3 George I. c 15.

Sheriffs levying Debts, &c. (except Post fines)

III. AND be it enacted by the Authority aforesaid, That from and after the ninth Day of *July* in the Year of our Lord one thousand seven hundred and seventeen, all Sheriffs who shall levy any Debts, Duties, or Sums of Money whatsoever, except Post-fines, due or hereafter to become due to the King's Majesty, his Heirs or Successors, by Process to them directed upon the Summons of the Pipe or Green Wax, or by *Levari Facias*, out of the Court of Exchequer, shall from Time to Time, for their Care, Pains and Charges, and for their Encouragement therein, have an Allowance upon their Accounts of twelve Pence out of every twenty Shillings for any Sum not exceeding one hundred Pounds so by them levied or collected; and the Sum of six Pence only for every twenty Shillings over and above the first one hundred Pounds; and for all Debts, Duties and Sums of Money, except Post-fines due or to become due to his Majesty, his Heirs and Successors, by Process on *Fieri facias* and *Extent*, issuing out of any of the Offices of the Court of Exchequer, the Sum of one Shilling and Sixpence out of every twenty Shillings, for any Sum not exceeding one hundred Pounds so by them levied or collected; and the Sum of twelve Pence only for every twenty Shillings over and above the first one hundred Pounds: Provided always, such Sheriff shall duly answer the same upon this Account by the general sealing Day of such Term in which he ought to be dismissed the Court, or in such Time to which he shall have a Day granted to finish his said Accounts, by Warrant signed by the Lord Chief Baron, or one of the Barons of the Coif of the said Court for the Time being, and not otherwise.

to have 1s. per Pound for the 1st 100l. and 6d for every 20s. above that Sum;

and on Process by Fi fa. and Extent, to have 1s. 6d. per Pound for the 1st. 100l. and 1s. per Pound above.

Provided he answer the same on his Account.

XVI. And for ascertaining the Fees for executing of Writs of *Elegit*, so far as the same relate to the extending of real Estates, and for ascertaining the Fees for executing of Writs of *Habere facias Possessionem aut Seisinam*; Be it enacted by the Authority aforesaid, That from and after the last Day of *Michaelmas* Term in the Year of our Lord one thousand seven hundred and seventeen, it shall not be lawful for any Sheriff, Under-Sheriff, Deputy-Sheriff, or their Bailiffs, or for the Bailiff of any Franchise or Liberty, or any of them, by Reason or Colour of their Office or Offices, or by Reason or Colour of their executing of any Writ or Writs of *Habere facias Posses-*

No Sheriff, &c. shall take above 1s per Pound of the yearly Value of any Manor, &c. where the whole exceeds not 100l. per Annum,

*sionem* aut *Seisinam*, to demand, ask, or receive any other or greater Consideration, Fee, Gratuity, or Reward, than is hereafter mentioned, (which shall be lawful to be demanded and taken) that is to say, the Sum of twelve Pence for every twenty Shillings of the yearly Value of any Manor, Messuage, Lands, Tenements, and Hereditaments, whereof Possession or Seisin shall be by them or any of them given, where the whole exceedeth not the yearly Value of one hundred Pounds, and the Sum of Six Pence only for every twenty Shillings *per Annum* over and above the said yearly Value of one hundred Pounds.

No. 21. 3 George I. c. 15.

and 6d only for every 20s above the said yearly Value.

By 8 Geo. I. c. 25 sect. 5. no more is to be taken on an Extent and Liberate.

'XVII And whereas it often happens that small Sums only are remaining due upon Judgments, Statutes and Recognizances given, acknowledged and entred into for great Sums and Penalties, and nevertheless in these Cases upon executing of Writs of *Capias ad satisfaciendum*, the Sheriff demands and takes for his Fees Poundage for the whole Money for which such Judgments, Statutes, or Recognizances are entred or acknowledged; which Poundage often far exceeds the Debts due to the Plaintiffs in such Writs:' For remedying of which Grievance and Inconvenience, Be it enacted by the Authority aforesaid, That from and after the said last Day of *Michaelmas* Term, one thousand seven hundred and seventeen, Poundage shall in no Case be demanded or taken upon executing of any Writ of *Capias ad satisfaciendum*, or upon charging any Person in Execution by virtue of such Writ, for any greater Sum than the real Debt *bona fide* due and claimed by the Plaintiff amounteth unto; which Sum the Plaintiff shall be and is hereby obliged to mark and specify on the Back of such Writ, before the same be delivered to the Sheriff to be executed; and in case any Sheriff, Under-Sheriff, Deputy-Sheriff, Bailiff or other Person shall offend against the true Meaning hereof, by taking any greater Fees, Gratuity or Reward, than is herein before allowed, every such Person so offending as aforesaid, and being thereof lawfully convicted, shall be adjudged, deemed and taken, and is hereby adjudged, deemed and taken to be guilty of Extortion, Injustice and Oppression; and all and every such Person and Persons being thereof lawfully convicted as aforesaid, shall for every such Offence forfeit to the Party aggrieved treble Damages, and double the Sum so extorted; which said Damages and Penalties shall be ordered, decreed and given to the said aggrieved Party, by the Court out of which such Writ or Writs issued, upon Complaint and Proof of such Extortion made and exhibited before the Judges of such Court, in such short and summary Way and Method as to them shall seem meet; and over and above the said Damages and Penalties, every such Person so offending and convicted as aforesaid shall forfeit the Sum of two hundred Pounds; one Moiety whereof shall be to the King's Majesty, his Heirs and Successors, and the other Moiety thereof to such Person or Persons as shall sue for the same; to be recovered by Action of Debt, Bill, Plaint, or

Poundage shall not be taken for executing any Ca. Sa. &c (of which Part is paid) for any greater Sum than what remains due to the Plaintiff, who is to mark the same on the Back of the Writ.

And any Sheriff, &c. offending, is guilty of Extortion, &c. and shall forfeit to the Party grieved the treble Damages, and double the Sum so extorted; and also 200l.

No. 24. 3 George I. c. 15. Information in any of the Courts of Record at *Westminster*, in which no Essoin, Protection or Wager of Law shall be allowed, nor any more than one Imparlance: Provided such Suit be commenced within two Years after such Offence committed, and not otherwise; and provided likewise, That no Person be sued or prosecuted by virtue of this Act for any Offence of this Kind committed before the said last Day of *Michaelmas* Term one thousand seven hundred and seventeen.

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## No. 25.

5 George I. c. 13.—An Act for the Amendment of Writs of Error; and for the further preventing the arresting or reversing of Judgements after Verdict.

[Inserted Class VI. No. 18.]

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## No. 26.

P. 8 George I. c. 25.—An Act for supplying some Defects in the Statute of the twenty-third of King *Henry* the Eighth, intituled, "An Act for Obligations to be taken by two Chief Justices, the Mayor of the Staple, and the Recorder of *London*," and for setting down the Time of signing Judgements in the Principality of *Wales*, and Counties Palatine.

No. 26. 8 George I. c. 25. 23 H. 8. c. 6. 'I. WHEREAS Recognizances in the Nature of a Statute-'Staple, which are, by the Statute of the twenty-'third of King *Henry* the Eighth, appointed to be taken by 'the two Chief Justices, the Mayor of the Staple, and the 'Recorder of *London*, are common and beneficial Securities; 'but in regard the same are liable to Damage and Loss that 'may happen by Fire, and otherwise, and by reason of Diffi-'culties arising by Defects in the said Statute, great Inconve-'niences do accrue to his Majesty's Subjects:' For Remedy thereof, and for making the said Security more effectual, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fifth Day of *March*, which shall be in the Year of our Lord one thousand seven hundred and twenty-two, the Rolls appointed by the said recited Statute to be made of such Recognizances, shall be varied and made in Manner following; (that is to say) The Clerk of the said Recognizances for the Time being, or his Deputy, shall yearly from thenceforth prepare and keep three Parchment Rolls as usual, and shall, at the Times of acknowledging of every such Recognizance, fairly write or ingross, instead of the Heads or Contents thereof, on the said

In what Manner the Rolls appointed by 23 H. 8. c. 6. to be made of Recognizances in the Nature of a Statute-Staple, shall be varied.

Rolls, the full Tenor, *in hæc verba*, of every such Recognizance; and that one of the said Rolls shall contain all the Recognizances to be taken before the Chief Justice of the King's Bench for the Time being; and one other of them shall contain all the Recognizances to be taken before the Chief Justice of the Court of Common Pleas for the Time being; and the other of them shall contain all the Recognizances before the Mayor of the Staple at *Westminster* and Recorder of *London* for the Time being; and that at the time of every such Acknowledgment, the respective Persons before whom such Recognizances shall be taken, and also the Party and Parties acknowledging the same, shall also sign their respective Names to the Roll or Inrolment of every Recognizance so taken under the Inrolment thereof, as well as sign and seal the same Recognizance; and that all the said three Rolls so signed shall at the End of every Year be fixed together, and be thereby made one Roll, as accustomed, and be and remain in the Custody of the Clerk of the Recognizances, or his Deputy, in his Publick Office in *London* or *Middlesex*, who shall keep a Docket to refer to the said Roll or Rolls, for the Benefit of Searches by Purchasers and others (as used to be) to which Docket also shall be added the Day, Month, and Year of every such Acknowledgment.

No. 26. 8 George I. c. 25.

Clerk of the Recognizances to keep a Docquet for Searchers.

II. And be it further enacted by the Authority aforesaid, That in case any Loss or Damage shall happen to any such Recognizance, the same shall and may, from any of the said Rolls, so to be kept in the Custody of the said Clerk, or his Deputy, in order to have Process thereon, be by him or them, by Certificate under his or their Seal, certified into Chancery in like Manner as Recognizances by the said recited Act are directed, and as if the said Recognizance had not been lost or damaged; and that to such Certificate, and all other Certificates of such Recognizances, shall be annexed a true Transcript of the Entry of such Recognizance to be taken from the said Roll or Rolls in his or their Custody; and further, that in case of any such Loss or Damage, a like Certificate, with such Transcript annexed as aforesaid, shall be made, and be left and remain with the Clerk of the Petty-Bag-Office in Chancery, and shall be as good and effectual as if the said Recognizance under Seal had been left in the same Office, as hath been used upon the issuing out of Process in the same Office; and that in order to prove such Statutes and Recognizances, in case of any Loss or Damage, a true Copy or Copies from the said Roll or Rolls, in the Custody of the said Clerk, or his Deputy, made and signed by the said Clerk or his Deputy, and duly proved, shall be deemed good Evidence of such Recognizances, and be of the same Validity, to all Intents and Purposes, as if the said original Recognizances were produced under Seal.

Any Loss happening to such Recognizance, shall be certified into Chancery.

A Transcript of the Entry to be annexed to such Certificate; and in case of Loss, a Copy shall be good Evidence.

'III. And whereas by the said Statute of the twenty-third 'of King *Henry* the Eighth, there was due to his Majesty 'a Fee of one Half-penny in the Pound (according to the Value 'or Sum entred into and contained in every such Recog-

No. 26.
8 George I.
c. 25.

'nizance) to be paid on sealing the first Process on every such 'Recognizance, as in the said Act is appointed, which is very 'heavy on every Prosecutor on every such Recognizance, 'by reason such Sum so entred into is sometimes only intended 'as a Penalty for the Payment of a lesser Sum, or for securing 'Damages for the Non-performance of Covenants, or other-'wise; And whereas the Fees and Charges taken or demanded 'by Sheriffs in getting an Extent or Execution, and *Liberate* 'and Possession or Seisin, executed on every such Recog-'nizance, are very expensive, in regard the same are not set-'tled:' For Remedy in all and every the said Cases, Be it further enacted by the Authority aforesaid, That the Prosecutor of every such Recognizance shall, at the Time of suing out the first Process, or a Writ of Extent thereon, deliver in to the Officer (who shall make out such Process or Extent) a Note in Writing under his Hand, testifying the Sum or Value of the Damages thereby intended to be extended or levied thereon, which Sum or Value the said Officer shall insert in the said Writ to be only extended or levied thereon, and no more; and that the said Poundage of one Half-penny, payable on all Process as aforesaid, shall be taken and paid only for every Pound, according to the said Sum or Value so inserted, and intended to be extended or levied as aforesaid, and not otherwise.

The Prosecutor shall deliver into the Office a Note testifying the Sum intended to be extended.

One Half-penny per Pound only, to be taken as Poundage.

In what Cases the Chancery may award Re-extents.

IV. Provided always, and it is hereby further enacted by the Authority aforesaid, That in case it shall, at any Time or Times before or after the Filing or Returning of any *Liberate* or *Liberates* sued out on any such Extent or Extents, be made appear to the Court of Chancery, that sufficient has not been extended and levied, or sufficiently extended and levied, to satisfy such Recognizance, or that any Omission, Error or Mistake, has happened in making, suing out, executing or returning any of the said Writs, or any Process thereupon; or should it happen that any Lands, Tenements, or Hereditaments, shall hereafter be evicted from any Person or Persons, who shall have extended the same by Virtue of any such Writ or Process as aforesaid; that then and in every such Case the said Court of Chancery shall and may award one or more Re-extent or Re-extents for the satisfying the same as aforesaid, and that Writs of *Liberate* or *Liberates* may be sued out thereupon; any Law or Statute to the contrary thereof in any wise notwithstanding.

No Sheriff shall take more Fees than are appointed by the Act 3 Geo. I. c. 15. Sec. 16.

V. And be it further enacted by the Authority aforesaid, That no Sheriff of any County shall take for the Extent and *Liberate*, and *Habere facias Possessionem* or *Seisinam*, on the Real Estate, and levy on the Personal Estate, by Virtue of such Extent, any more than the same Fees as are appointed by an Act made in the third Year of his present Majesty's Reign, intituled, "An Act for the better regulating the Office of Sheriffs, and for ascertaining their Fees, and the Fees for suing out their Patents and passing their Accounts," for executing a Writ of *Elegit* and *Habere facias Possessionem* or *Seisinam*, under the like Penalties and Forfeitures, and to be in like Man-

ner recovered against every Sheriff or Person therein offending, as the same are mentioned and appointed in and by the same Act. No. 26. 8 George I. c. 25.

## No. 27.

32 George II. c. 28.—An Act for the Relief of Debtors with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of and deliver upon Oath, their Estates for their Creditors Benefit.

[Inserted Class III. No. 29.]

## No. 28.

7 George III. c. 29.—An Act for explaining an Act made in the twenty-ninth Year of the Reign of Queen *Elizabeth*, to prevent Extortion in Sheriffs, Under-Sheriffs, and Bailiffs of Franchises or Liberties, in Cases of Execution.

No. 28. 7 George III. c. 29.

29 Eliz. c. 4.

'WHEREAS by an Act made in the twenty-ninth Year of 'the Reign of Queen *Elizabeth*, intituled, "An Act 'to prevent Extortion in Sheriffs, Under-Sheriffs, and Bailiffs 'of Franchises or Liberties, in Cases of Execution," it is, 'amongst other Things, enacted, That it shall not be lawful to 'or for any Sheriff, Under-Sheriff, Bailiff of Franchises or 'Liberties, nor for any of their Officers, Ministers, Servants, 'Bailiffs, or Deputies, nor for any of them, by reason or co-'lour of their or either of their Office or Offices, to have, re-'ceive, or take, of any Person or Persons whatsoever, direct-'ly or indirectly, for the serving and executing of any Extent 'or Execution upon the Body, Lands, Goods, or Chattels, of 'any Person or Persons whatsoever, more or other Conside-'ration or Recompence than in this present Act is and shall be 'limited and appointed, which shall be lawful to be had, re-'ceived, and taken; that is to say, Twelve-pence of and for 'every twenty Shillings, where the Sum exceedeth not one 'hundred Pounds; and six Pence of and for every twenty 'Shillings, being over and above the said Sum of one hundred 'Pounds, that he or they shall so levy or extend, and deliver 'in Execution, or take the Body in Execution for, by virtue 'and by force of any such Extent or Execution whatsoever: 'And whereas, as the Law now stands, Sheriffs are, by virtue 'of the said recited Act, intitled to the Poundage therein men-'tioned, for taking the Body of any Person in Execution, upon 'Judgments obtained upon Bail Bonds, entered into for the 'Appearance of Persons prosecuted for Offences against the

No. 28.
7 George III. c. 29.

'Laws relating to his Majesty's Revenues of Customs or Excise, such Bail Bonds being prosecuted in the Name and at the Suit of the Sheriffs to whom such Bail Bonds are given, though the Sheriffs prosecuting such Bonds are merely Trustees in the Suits, for the Benefit of the Crown, and the Sheriffs executing such Process, would not in those Cases be intitled to any Poundage, if the Proceedings were carried on in the Name of the Crown; by Means whereof the Intent of the Laws relating to the Revenues of the Customs and Excise will in such Cases be so far defeated:' To remedy which Inconvenience for the future, May it please your Majesty, that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said recited Act shall not extend, or be construed to extend, to allow any Sheriff, Under Sheriff, or other Person whatsoever employed in the Execution of Process, any Poundage, for taking the Body of any Person in Execution upon any Process at the Suit of any Sheriff, or other Officer or Minister of the Crown, upon any Bail Bond entered into for the Appearance of any Person prosecuted, either for any Duties due or payable to his Majesty, his Heirs or Successors, or for any Penalty inflicted by any Act of Parliament made or to be made for the preventing the clandestine Running or Receiving any customable or prohibited Goods; or in any Case whatsoever where the Sheriff or Officer executing such Process would not be intitled to Poundage, if the Proceedings were or had been carried on directly in the Name of the Crown; any Thing in the said recited Act, or any other Act, to the contrary notwithstanding.

Cases not intitled to Poundage, &c.

## No. 29.

33 George III. c. 5. — An Act for the further Relief of Debtors, with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver, upon Oath, their Estates for their Creditors Benefit.

[Inserted Class II. No. 32.]

No. 30.

37 George III. c. 85.—An Act to amend so much of an Act, made in the thirty-second Year of the Reign of King *George* the Second, intituled, "An Act for the Relief of Debtors, with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver upon Oath, their Estates, for their Creditors Benefit," as relates to the weekly Sums thereby directed to be paid to Prisoners in Execution for Debt, in the Cases therein mentioned.—[19th. *June* 1797.]

[Inserted Class II. No. 33.]

No. 31.

43 George III. c. 46.—An Act for the more effectual Prevention of frivolous and vexatious Arrests and Suits; and to authorize the levying of Poundage upon Executions in certain Cases.—[27th *May* 1803.]

[Inserted Class III. No. 36.]

No. 32.

48 George III. c. 123.—An Act for the Discharge of Debtors in Execution for small Debts, from Imprisonment in certain Cases.—[30th. *June* 1808.]

[Inserted Class III. No. 38.]

No. 33.

56 George III. c. 50.—An Act to regulate the Sale of Farming Stock taken in Execution.—[20th. *June* 1816.]

No. 33. 56 George III. c. 50.

WHEREAS it is expedient that the Execution of legal Process should be so regulated, as to be consistent with good Husbandry, and the Effect and Intent of Covenants and Agreements entered into between the Owners and Occupiers of Land let to farm; be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, no Sheriff or other Officer in *England* or *Wales*, shall, by virtue of any Process of any

No Sheriff or other Officer shall sell or

No. 33.
56 George III. c. 50.

carry off from any Lands any Straw, Chaff, or Turnips, in any Case, nor any Hay or other Produce contrary to the Covenant.

Court of Law, carry off or sell, or dispose of for the Purpose of being carried off, from any Lands let to farm, any Straw threshed or unthreshed, or any Straw of Crops growing, or any Chaff, Colder, or any Turnips, or any Manure, Compost, Ashes, or Seaweed, in any Case whatsoever, nor any Hay, Grass or Grasses, whether natural or artificial, nor any Tares or Vetches, nor any Roots or Vegetables, being Produce of such Lands, in any Case where, according to any Covenant or written Agreement, entered into and made for the Benefit of the Owner or Landlord of any Farm, such Hay, Grass or Grasses, Tares and Vetches, Roots or Vegetables, ought not to be taken off or withholden from such Lands, or which, by the Tenor or Effect of such Covenants or Agreements, ought to be used or expended thereon, and of which Covenants or Agreements, such Sheriff or other Officer shall have received a written Notice before he shall have proceeded to Sale.

Tenant to give Notice of the Existence of Covenants;

II. And be it further enacted, That the Tenant or Occupier of any Lands let to farm, against whose Goods any Process of Law shall issue, whereby such Goods may be taken and sold, shall, on having Knowledge of such Process, give a written Notice to the Sheriff or other Officer executing the same, of such Covenants or Agreements whereof he or she shall have Knowledge, and which may relate to and regulate, or are intended to regulate the Use and Expenditure of the Crops or Produce grown or growing thereon, and also of the Name and Residence of the Owner or Landlord of such Lands; and such Sheriff or other Officer shall forthwith, on executing such Process, and before any Sale shall have been proceeded in, send a Notice by the General Post to the Owner or Landlord of such Lands, in all Cases where such Owner or Landlord shall be resident in any Part of this United Kingdom, and shall have been made known to and ascertained by such Sheriff or other Officer, and also to the known Steward or Agent of such Landlord or Owner, in respect of such Lands, stating to such Owner, Landlord and Agent, the Fact of Possession having been taken of any Crops or Produce herein-before mentioned; and such Sheriff or other Officer shall, in all Cases of the Absence or Silence of such Landlord or Owner, or his or her Agent, postpone and delay the Sale of such Crops or Produce until the latest Day he lawfully can or may appoint for such Sale.

and Sheriff to give Notice to the Owner or Landlord.

Sheriff may dispose of Produce subject to an Agreement to expend it on the Land.

III. Provided always, and be it further enacted, That such Sheriff or other Officer executing such Process, may dispose of any Crops or Produce herein-before mentioned, to any Person or Persons, who shall agree in Writing with such Sheriff or other Officer in Cases where no Covenant or written Agreement shall be shewn, to use and expend the same on such Lands, in such Manner as shall accord with the Custom of the Country; and in Cases where any Covenant or written Agreement shall be shewn, then according to such Covenant or written Agreement; and after such Sale or Disposal so qualified, it shall be lawful for such Person or Persons to use

No. 33.
56 George III. c. 50.

all such necessary Barns, Stables, Buildings, Outhouses, Yards and Fields, for the Purpose of consuming such Crops or Produce, as such Sheriff or other Officer shall allot or assign to them for that Purpose, and which such Tenant or Occupier would have been entitled to and ought to have used for the like Purpose on such Lands.

Sheriff to assign Agreement to Landlord.

IV. And be it further enacted, That such Sheriff or other Officer shall, on the Request of any Landlord or Owner who shall be aggrieved by any Breach of such Agreement, permit such Landlord or Owner to bring any Action or Actions in the Name of such Sheriff or other Officer, for the Recovery of Damages in respect of such Breach, such Landlord or Owner having nevertheless fully indemnified such Sheriff or other Officer against all Costs whatsoever, and all Loss and Damage, before any such Action shall be commenced.

Sheriff to enquire as to the Name and Residence of the Landlord.

V. And be it further enacted, That such Sheriff or other Officer shall, before any Sale of any Crops or Produce of any Lands let to farm shall be proceeded in, make, by all Ways and Means, due Enquiry within the Parish where such Lands shall be situate, as to the Name and Residence of the Landlord or Owner of such Lands.

Landlords not to distrain for Rent on Purchasers of Crops severed from the Soil, or other Things sold subject to Agreement.

VI. And be it further enacted, That in all Cases where any Purchaser or Purchasers of any Crop or Produce herein-before mentioned, shall have entered into any Agreement with such Sheriff or other Officer, touching the Use and Expenditure thereof on Lands let to farm, it shall not be lawful for the Owner or Landlord of such Lands to distrain for any Rent on any Corn, Hay, Straw or other Produce thereof, which, at the Time of such Sale, and the Execution of such Agreement, entered into under the Provisions of this Act, shall have been severed from the Soil, and sold, subject to such Agreement, by such Sheriff or other Officer; nor on any Turnips, whether drawn or growing, if sold according to the Provisions of this Act; nor on any Horses, Sheep or other Cattle, nor on any Beast whatsoever, nor on any Waggons, Carts, or other Implements of Husbandry, which any Person or Persons shall employ, keep or use on such Lands, for the Purpose of threshing out, carrying or consuming any such Corn, Hay, Straw, Turnips or other Produce, under the Provisions of the Act, and the Agreement or Agreements directed to be entered into between the Sheriff or other Officer, and the Purchaser or Purchasers of such Crops and Produce, as herein-before are mentioned.

Sheriff not to sell any Clover, &c. growing with Corn.

VII. And be it further enacted, that no Sheriff or other Officer shall, by virtue of any Process whatsoever, sell or dispose of any Clover, Ryegrass or any artificial Grass or Grasses whatsoever, which shall be newly sown, and be growing under any Crop of standing Corn.

Act not to affect Contracts.

VIII. Provided always, and be it enacted, That this Act shall not extend to any Straw, Turnips or other Articles, which the Tenant may remove from the Farm consistently with some Contract in Writing.

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56 George III. c. 50.

Sheriff not to be liable for Damages, unless for wilful Omission.

IX. And be it further enacted, That in every Case where any Action shall be brought against such Sheriff or other Officer, for any Breach of or Omission of Compliance with the Provisions of this Act, no Plaintiff shall be entitled to recover any Damages against such Sheriff or other Officer, unless it shall be proved on the Trial of such Action, that such Breach or Omission was wilful on the Part of such Sheriff or other Officer.

Indemnity to Sheriff and others acting under the Provisions of this Act.

X. And be it further enacted, That no Sheriff or Under Sheriff, nor any or either of their Deputies, Agents, Bailiffs, or Servants, nor any Person or Persons who shall purchase any Hay, Straw, Chaff, Turnips, Grass or Grasses, or other Produce and Things herein-before mentioned, under the Provisions of this Act, nor his, her, or their Servant or Servants, shall be deemed or taken to be a Trespasser by reason of his, her, or their coming upon or remaining in Possession of any Barns or other Buildings, Yards or Fields, for the Purpose of threshing out or consuming any Straw, Hay, Turnips, or other Produce herein-before mentioned, under the Provisions of this Act, or for doing any Matter or Thing whatsoever, fit and necessary to be done for the Purpose of executing the same, and carrying into Effect all Stipulations contained in any Agreement made under such Provisions, though such Acts shall have been done by such Sheriff or other Officer, and by such Person or Persons, his, her or their Servants, after the Return of the Process under which such Sheriff or other Officer shall have acted.

Assignee of Bankrupt, &c. not to take any Crop in any other way than the Bankrupt would have been entitled to do.

XI. And be it further enacted, That no Assignee of any Bankrupt, or of any Insolvent Debtor's Estate, nor any Assignee under any Bill of Sale, nor any Purchaser of the Goods, Chattels, Stock or Crop of any Person or Persons engaged or employed in Husbandry, on any Lands let to farm, shall take, use, or dispose of any Hay, Straw, Grass or Grasses, Turnips, or other Roots, or any other Produce of such Lands, or any Manure, Compost, Ashes, Seaweed or other Dressings intended for such Lands, and being thereon, in any other Manner, and for any other Purpose, than such Bankrupt, Insolvent Debtor, or other Person so employed in Husbandry, ought to have taken, used or disposed of the same, if no Commission of Bankruptcy had issued, or no such Assignment or Assignments had been executed, or Sale made.

# PART IV. CLASS XIII.

## ERROR AND FALSE JUDGMENT.

### No. 1.

### Henry III. c. 19.—None but the King shall hold Plea of false Judgment.

*Ex Rot. in Turr.* Lond.

NULLUS de cetero (excepto domino Rege) placitum teneat de falso judicio facto in Curia tenentium suorum; quia hujusmodi placita specialiter spectant ad coronam & dignitatem domini Regis.

'NONE from henceforth (except our Lord the King) shall hold in his Court any Plea of false Judgment, given in the Court of his Tenants; for such Plea specially belongeth to the Crown and Dignity of our Lord the King.'

No. 1. 52 Henry III. c. 19.

### No. 2.

### 13 Edward I. stat. 1. c. 31.—An Exception to a Plea shall be sealed by the Justices.

CUM aliquis implacitatus coram aliquibus Justitiariis proponat exceptionem & petat quod Justitiarii eam allocent quam si allocare noluerint si ille qui exceptionem proponet scribat illam exceptionem & petat quod Justitiarii apponant sigilla in testimonium Justitiarii sigilla sua apponant & si unus apponere noluerit apponat alius de societate. Et si forte ad querimoniam de facto Justitiariorum venire faciat Dominus Rex recordum coram eo

'WHEN one that is impleaded before any of the Justices doth alledge an Exception, praying that the Justices will allow it, which if they will not allow, if he that alledged the Exception do write the same Exception, and require that the Justices will put to their Seals for a Witness, the Justices shall so do; and if one will not, another of the Company shall. And if the King, upon Complaint made

No. 2. 13 Edward I. stat. 1. c. 31.

No. 2.
13 Edward I. stat. 1. c. 31.

'of the Justices, cause the 'Record to come before 'him, and the same Exception be not found in the Roll, 'and the Plaintiff shew the 'Exception written, with the 'Seal of a Justice put to, the 'Justice shall be commanded 'that he appear at a certain 'Day, either to confess or 'deny his Seal. And if the 'Justice cannot deny his Seal, 'they shall proceed to Judgment according to the same 'Exception, as it ought to be 'allowed or disallowed.'

*Ex Rot. in Turr.* Lond.

& si illa *receptio* * non inveniātur in rotulo & querens ostendat exceptionem scriptam cum sigillo Justitiarii appenso mandetur Justitiario quod sit ad certum diem ad cognoscendum sigillum suum vel dedicendum. Et si Justitiarius sigillum suum dedicere non possit procedatur ad judicium secundum illam exceptionem, prout admittenda esset vel cassanda. (1.)

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* For *receptio* read *exceptio*.

(1.) For the Form and Course of Proceedings in Bills of Exceptions, see Bull. N. P. 315; Tidd's Practice, C. 38. See also the View of the Subject taken by Lord Redesdale, in the Case of the Lessee in Lawlor *v.* Murray, 1 Schoales and Lefroy, 75, in which Case his Lordship superseded a Writ obtained from the Cursitor, without Order grounded upon this Statute, commanding the Judges of the King's Bench in Ireland, to affix their Seals to a Bill of Exceptions, against an Order for Liberty to amend the Record; holding, that no Officer of the Court was warranted in making such Writ without special Order; and secondly, that if any Officer was so warranted, it was not the Cursitor. He observed, that the Authorities in Support of his Opinion were few, because the Writ itself had been rarely used: it had rarely been necessary to resort to it, as the Judges would be most likely to seal the Bill of Exceptions in any Case where they ought. In the marginal Abstract of the Case it is stated, that such Writ does not lie where the Exception taken is to an Order of a Court of Law, amending one of its own Records. *Nor semble* to any Order made upon Motion. I do not find this Opinion expressed in the Body of the Report, but it seems in itself to be perfectly correct.

The better Opinion seems to be, that a Bill of Exceptions does not lie in criminal Cases. The following Summary of the Authorities is extracted from Mr. Phillips's Law of Evidence, 111.—" The Statute extends to the Plaintiff as well as the Defendant, and to a Trial at Bar as well as at Nisi Prius; but it has been doubted whether it extends to criminal Cases. Lord Coke, in his Exposition of the Statute, states, that it extends to all Actions, real, personal, and mixed; but of criminal Cases he makes no mention. In the Case of Sir H. Vane, (1 Lev. 68; Kel. 15; 1 Sid. 85) who was tried for High Treason, the Court refused to seal a Bill of Exceptions, because, they said, criminal Cases were not within the Statute, but only Actions between Party and Party. From this Authority Mr. Serjeant Hawkins infers only, that a Bill of Exceptions is not allowable on an Indictment for Treason or Felony; Pl. Cro. v. 2, c. 46, s. 210. 'Whether a Bill lies not in any criminal Case,' said Lord Hardwicke, 'is a Point not settled:' R. *v.* Inhab. of Preston, Rep. Temp. Hard. 251. It was allowed in the Case of the King against Lord Paget and others, on an Indictment for a Trespass; 1 Leon. 5; and also on an Information in the Nature of a Quo Warranto; R. *v.* Higgins and others, 1 Ventr. 366. But Lord Hardwicke, in the Case before referred to, after saying that he had known a Bill of Exceptions allowed in Informations in the Exchequer, which are Civil Suits for the King's Debt, added, that it has never been determined to lie in mere criminal Proceedings in other Courts."

From the Language of the Statute itself, I certainly should not infer its Application to criminal Cases. The Rule that the King is not bound

by the general Words of an Act of Parliament would also seem to militate against such Construction; and perhaps the Cases in the Exchequer, which are in Opposition to this Application of the Maxim, may have passed without Discussion or Opposition. The general Feeling of the Profession upon the Subject is most strongly evinced by the Fact of no such Bill of Exceptions having been tendered for a very long Period of Time, although many important Questions of criminal Law have been discussed with great Warmth, and with strong Feelings of Opposition to the Opinions of the Court, of which the much agitated Question of the Functions of the Jury in Cases of Libel, previous to the Statute of 32 Geo. III., is perhaps the most prominent Instance. Upon referring to the Case in 1 Leon. 5, which is the only direct Authority alleged in Support of the opposite Opinion, it appears that the Bishop of Coventry and Lichfield, being indicted for a Trespass in the Close of Lord Paget, challenged the Array, because that he being a Lord of Parliament no Knight was returned, upon which the Queen's Counsel did demur in Law; but at last, for Expedition, &c. the Court delivered to the Counsel for the Bishop, a Bill sealed to secure him the Advantage of the said Challenge, and the Inquest was taken *de bene esse*. The Case was finally disposed of in Favour of the Defendant upon an Objection to the Indictment, and no Argument or Discussion whatever took place as to the general Question of the admitting Bills of Exceptions in criminal Cases; but the Course seems to have been adopted by general Consent, at the Suggestion of the Judge, as the most convenient Way of saving the Question of Challenge. It seems doubtful whether the Challenge of the Array is quite the proper Object of a Bill of Exceptions, and whether such Challenge ought not, independently of the Statute, to be introduced on the Record, so as to entitle the Party to the Benefit of a Writ of Error in case of its being overruled.

The Case of the *Quo Warranto* in Ventr. seems to give as little direct Support to the general Right to a Bill of Exceptions, even in that mixed Form of Proceeding. That was also the Case of a Challenge to the Jury, on the Ground of their not being Freeholders. The Court held, that the Statutes requiring Jurymen to have so much Freehold, do not extend to Corporate Towns. It was then said, that by the common Law Jurymen were to be Freeholders. But the Court overruled the Challenge; but at the Importunity of the Counsel, they allowed a Bill of Exceptions, and a Verdict passed against the Defendants, and afterwards it was moved in Arrest of Judgment upon the Point. But the Court would not admit the Matter to be debated before them, (though divers Precedents of the like Nature were offered) because they said they had delivered their Opinions before, and the Redress might be had upon Writ of Error.

In this Case also it is observable, that there was no Discussion as to the general Question of a Bill of Exceptions being admissible in regard to the particular Kind of Proceeding. The Bill of Exceptions is stated to be admitted at the Importunity of the Defendant's Counsel; but it is certainly contrary to the general Understanding respecting this Proceeding, that the Admission or Rejection of it shall be discretionary in the Court; and I apprehend, that in all Cases where a Bill of Exceptions is held properly to lie, it is considered as perfectly a Matter *de jure*, to require an Acceptance of the Tender of it.

Bills of Exceptions are in Practice not frequently resorted to, which I think is rather to be regretted as far as regards the general Interests of legal Science, and the due Investigation of those Principles, upon which it is most important to establish general Conclusions of Jurisprudence. It is impossible to deny the Existence of a certain Feeling of Disrespect supposed to be connected with them. Of this, one of the strongest Proofs is the Apology by which they are always accompanied, and the Declaration of Inoffensiveness with which they are as constantly received; whereas, to have their proper Effect and Influence in the Administration of Justice, it is desirable that they should pass without any adventitious Notice, and be treated as Matter of Course in the same Manner as a common Motion for a new Trial. Sir James Burrow, in recording the great Quantity of Business dispatched in the Court of King's Bench at the Period comprized in the first four Volumes of his Reports, (insignificant as it was in Comparison to the

present) and noticing the small Proportion of Writs in London and Middlesex which afterwards came before the Court in the Shape of special Verdicts, special Cases, Motions for new Trial, or in Arrest of Jugdment, adds that of a Bill of Exceptions there had been no Instance, which certainly affords undeniable Evidence of the Kind of Feeling adverted to.

The Advantage arising from the full and deliberate Discussion of a Question introduced in the Record, is strongly exemplified in the famous Case of Bent and Baker, in which many vague Notions respecting the Competence of Witnesses, which had before prevailed, were fully refuted, and the Doctrine was reduced to a plain, general and intelligible Principle. In Cases where the Objection to be encountered relates to Evidence supposed to be improperly received, the Party taking the Exception cannot be met by the Observation, (which sometimes prevails upon Motions for new Trials,) that independently of the Evidence objected to, there was sufficient to warrant the Jury to come to the same Conclusion, when possibly the particular Evidence may have been the connecting Link upon which the Credit of all the Rest may have depended. In some Cases, as where the Objection is to the Want of a proper Stamp, the Ground of such Objection may be removed in the Event of obtaining a new Trial. The Expense attending the Proceeding by Writ of Error, in which alone a Bill of Exceptions is of any avail, is sometimes considered as a Reason against resorting to it; but I am inclined to think, that the Expenses of a second Trial at Nisi Prius would generally exceed those of removing the Record; although in this Respect much will in every Case depend upon adventitious Circumstances. I certainly think that it would be a considerable Improvement if the Law in this Respect were altered, and that a Bill of Exceptions, taken at Nisi Prius, might be argued in the first Instance in the Court in which the Action is brought. At the Time of passing the Statute, and long afterwards, almost all important Issues were tried at Bar; a Mode of Trial which is now almost entirely discontinued, and of which I do not remember three Instances in Civil Cases. The Sittings at Nisi Prius in Middlesex were not instituted until a comparatively modern Period, and the summary Relief given upon Motions for new Trials was not introduced until near four Centuries after the Passing of the Act. The Discussion of Exceptions in the same Court would at that Time have been very much an Appeal *ab eodem ad eundem*; whereas at present that Objection would not apply, and the other Difficulties at present operating against this Mode of reserving the Discussion of a disputed Question, would be in a great Measure removed.

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A Demurrer to Evidence coincides with a Bill of Exceptions in the Circumstance, that it is a Means whereby the Party can, at his own Discretion, introduce the Point which he contends for on the Record; but the Cases in which there is a convenient Opportunity of doing so are but unfrequent, and the Instances of this Procedure are, I apprehend, still more rare than those of Bills of Exceptions. In order to take this Course, not only the Truth of the Evidence must be admitted, and withdrawn from the Jury, but the Presumptions and Inferences to be deduced from such Facts must be also conceded. See upon this Subject, Wright *v.* Pindar, Alleyn, 18, cited 2 H. B. 208. The following View of the Subject by Buller J., in Cocksedge *v.* Fanshaw, Doug. 134, (the Judgment of the Court, in Conformity to which was affirmed in the Exchequer Chamber and House of Lords, n. ibid.) is very distinct:

"Upon the Question, What is the Nature of a Demurrer to Evidence? I think Mr. Davenport (the Counsel for the Defendant) has gone a great Way too far. It is the Province of a Jury alone to judge of the Truth of Facts and the Credibility of Witnesses, and the Party cannot, by a Demurrer to Evidence or any other Means, take that Province from them, and draw such Questions *ad aliud examen*. I think the plain and simple Rule is this: The Demurrer admits the Truth of all Facts, which, upon the Evidence stated, might be found by the Jury in Favour of the Party offering the Evidence. Mr. Davenport puts the Case of a special Verdict, and says, the Reason for a Demurrer is, that the Party demurring does not chuse to trust the Jury. In a certain Degree that is true; but the Reason of not trusting the Jury is, because they may if they please refuse to find a special Verdict, and then the Facts never appear on the Record. But whether the Case comes before the

Court on a Demurrer to Evidence, or a special Verdict, the Law is the same. I agree with Mr. Wood in his Definition of a Demurrer to Evidence, viz. that it admits all Matters of Fact which a Jury might find, and only brings the Demurrer upon the Inference, in Point of Law, from those Facts before the Court."

The Matter was brought to a more precise Point by the Opinion of the Judges, as delivered by Eyre C. J., in Gibson and Johnson *v* Hunter, 2 H. B. 187, 209, in Dom. Proc., in which, after an Examination of preceding Authorities, he stated it to be the Answer of the Judges to a Question proposed by the House, "that upon the State of the Evidence given for the Plaintiff, it was not competent to the Defendants to insist upon the Jury being discharged from giving a Verdict by demurring to the Evidence, and obliging the Plaintiff to join in Demurrer, without distinctly admitting upon the Record every Fact and every Conclusion which the Evidence given for the Plaintiff tended to prove."

In Cases which can be fairly brought within this Rule, and where the Matter in Dispute is reduced to a plain and distinct Point of Law, I apprehend that a Demurrer to Evidence, however unusual, would in many Cases be found a very judicious Course of Proceeding, as well in respect of the Interests of the immediate Parties, as in producing a solemn and deliberate Decision upon the legal Question.

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With respect to special Verdicts, these are considered by Sir Wm. Blackstone, 3 Com. 377, as grounded upon Stat. West. 2d. 13 Edward I. c. 30. s. 2, (ante Class I. No. 4) which provides, that "the Justices assigned to take Assises shall not compel the Jurors to say precisely whether it be a Disseisin or not, so that they do shew the Truth of the Deed, and require Aid of the Justices. But if they of their own Head will say, that it is Disseisin, their Verdict shall be admitted at their own Peril." This Peril, at the Time of passing the Act, and when the Proceeding by Attaint was in full Force, was not a mere empty Sound. But the Language of the Statute does not by any means import that special Verdicts were previously unknown; and Lord Coke, in his Commentary upon the Statute, 2 Inst. 425, says, "in the End it hath been resolved, that in all Actions, real, personal and mixed, and upon all Issues, joint, special or general, the Jury might find the special Matter of Fact pertinent and binding only to the Issue joined, and thereupon pray the Discretion of the Court for the Law, and this the Jury might do at the common Law, not only in Cases between Party and Party, whereof this Act putteth an Example of the Assise, but also in Pleas of the Crown, which is a Proof of the common Law; for if this Act had made a new Law, and that other like Cases between Party and Party had been taken by Equity, yet the King had not been bound thereby." It may be here incidentally noted, that this Observation confirms the Opinion already expressed against the Right to tender a Bill of Exceptions in criminal Proceedings, as there is no Question as to the Statute being in that respect a new Law.

In comparing special Verdicts with special Cases, it is a well known Distinction that the later form no Part of the Record, and therefore cannot be made the Subject of Review. Upon a special Verdict, if the Judges are equally divided, nothing can be done, but the Matter remains in Suspence; but if the Verdict is taken for the Plaintiff subject to a Case, and there is an equal Division, I apprehend the Course to be, the Judgment will be given according to the Verdict. This may sometimes operate materially to the Disadvantage of Defendants, as the Statement of the Case by no means necessarily imports an Opinion of the Court of Nisi Prius in Favour of the Plaintiff.

Another Distinction, which I apprehend to exist between special Cases and special Verdicts is, that in the latter every Thing must be formally found, and nothing can be presumed as the actual Conversion in Trover, of which the Demand and Refusal are only Evidence, but that the same particularly is not requisite with respect to special Cases, which are rather in the Nature of a Reference to the Court, as to the Direction which should properly have been given to the Jury at the Trial.

In a former Publication, after noticing the Case of Roe on the Demise of Reade *v.* Reade, 8 T. R. 123, in which Lord Kenyon laid it down, that when

the beneficial Enjoyment has given rise to suppose that there possibly may have been a Conveyance to the Person equitably intitled, a Jury may be allowed to presume a Conveyance, but if it appeared on a special Verdict *or special Case*, that the legal Estate was outstanding in another Person, the Party not cloathed with the legal Estate cannot recover in a Court of Law; I took the Liberty to observe, that I perfectly acceded to this Position, as it applies to the Case of special Verdicts, but that with respect to a special Case, I did not think the Doctrine equally clear; for that such a Case is in its Principle a Reference to the Court respecting what ought to have been done at the Trial, and had been introduced in lieu of a former Practice for the Judge to reserve a Case for his own subsequent Consideration; that if the Conveyance of the legal Estate is, with reference to the Case, a Question of Presumption *upon the actual Fact*, and upon which the Jury ought to be directed to exercise their Judgment, and to decide whether such Fact existed or not, in the same Manner as they would exercise a Judgment upon any other Matter of presumptive Evidence, the Court cannot assume the Office of the Jury, and infer the Fact themselves. But if the Presumption is such as ought *de Jure* to be made in pursuance of Rules generally laid down; if the Jury are not to be directed to consider whether the Inference does or does not arise, but are to be told that it is a Presumption which they are to make in consequence of an established Rule of Practice, in order to prevent the Party being turned round upon the legal Objection; in other Words, if it is an established legal Fiction, the Omission of stating it in a special Case ought not to be material; for the Object of such a Case is either to ascertain some other Point respecting the Title, or to decide whether it is a Case to which the Presumption *de Jure*, or legal Fiction, properly applies? whether, independent of the Finding of the Jury upon any Thing which ought [not] to be submitted to them as a disputable Fact, the Plaintiff is intitled to recover? and to have a more deliberate Consideration of the Questions intended to be particularly reserved, than the Nature of the Proceeding at Nisi Prius will admit. A special Verdict in Ejectment must formally state the Lease, Entry and Ouster of the nominal Plaintiff, but this is never done in a special Case; the one being, in respect of Formalities and Matters of Course, governed by Principles essentially different from the other. —View of Lord Mansfield's Decisions, Vol. 2, 236, n. — A Practice has lately been introduced of reserving a special Case, with Liberty to turn it into a special Verdict; which is a very convenient Course of Proceeding, as it is attended with a saving of Expense in the first Instance, and allows the Benefit of a further Revision of the disputed Question.

With respect to the Facility of granting Cases, and the Mode of stating them, I have often regretted the Deviation which has taken place from the Course pursued by Lord Mansfield, and which was stated by himself in Luke *v.* Lyde, 1 Bur. 887, as follows; "He said he had always inclined (even when he had himself no Doubt) to make Cases for the Opinion of the Court, not only for the greater Satisfaction of the Parties in the particular Cause, but to prevent other Disputes, by making the Rules of Law, and the Grounds on which they are established, certain and notorious; but he took particular Care that they should not cause Delay or Expense; and therefore he always dictated a Case in Court, and saw it signed before another Cause was called, and always made it a Rule that it should be set down to be argued within the first four Days of the Term." Mr. Justice Park, in the Introduction to his Treatise on Insurance, contrasts this Course with the preceding Practice, stating that it had been the Custom when Cases were reserved, to leave it to the Counsel on both Sides to draw them up at Leisure. This introduced considerable Delays, for every Fact became a Subject of Dispute; and frequently, from the Hurry of Business and other Avocations of Counsel, the Case was neglected for a considerable Time before it was ready for the Inspection of the Court.

With Lord Mansfield's Presidency, the Practice introduced by him absolutely ceased, and the Inconveniences just mentioned as resulting from the previous Practice, have been renewed in a very aggravated Degree. Great as Lord Kenyon's Excellences indisputably were, the Impatience and Irritability of his Temper were a most serious Disadvantage in the Administration of Justice; and nothing would have been more repugnant to his Habits, than to have adopted the Course of deliberately dictating a Case

as followed by his Predecessor. In modern Practice, as far as my Observation goes, the Reservation of a special Case generally induces a Cavil upon some verbal Nicety upon some bye Point, some collateral and incidental Question, upon which a Decision may be obtained of the particular Case, independently of the general Question which was the Object of the Case being reserved; and I cannot but think that this Course has too frequently met with the Encouragement of the Courts, who have preferred resting upon the special Ground of some incidental Finding, to entering into the Discussion of the general Question intended to be reserved.

I am not equally prepared to join in the Commendation of the learned Writer on the Law of Insurance, in his Panegyric on another Alteration in the Course of Practice introduced under the Auspices of Lord Mansfield; before whose Time it is observed, that it was almost a Matter of Course not to decide any Case without hearing two Arguments upon it; but in the very first Cause which is reported of his Lordship's Decisions, he expressed himself to this Effect:—"When we have no Doubt, we ought not to put the Parties to the Delay and Expense of a further Argument, nor leave other Persons, who may be interested in the Determination of a Point of a general Nature, unnecessarily under the Anxiety of Suspense." Without insisting upon the Expediency of allowing a second Argument, merely as a Matter of Course, I do think it is to be regretted, that that Practice has been so very generally discontinued, and that the Character of mere Dispatch has been in modern Times allowed to hold so high a Place in the Scale of judicial Reputation. To every Person of Reflection and Observation, many Instances must occur, in which first Impressions of very considerable Force have yielded to the subsequent Views, arising from a more enlarged and deliberate Consideration: and perhaps it may not be unworthy of Remark, that the Case of Reynard and Chase, with which the general Deviation from the preceding Cases originated, is one which by no means bears the Character of undisputed Rectitude of Decision. In the greater Part of the Suggestions contained in the Notes to the present Work, the principal Object in Contemplation is, the obviating unnecessary Expense or Delay; but the most beneficial Means of attaining that End are those which are supplied by such Arrangements as may present the real Object in Dispute to the Consideration of the Court in the most easy and commodious manner, and defeat the Artifices of Chicanery and Oppression. But some Sacrifice is due to the Object of producing such a Decision upon an immediate Case, as may have the Effect of eliciting correct Principles, for the future Guidance of the Profession and the Public, and may prevent Observations from having the Character of Authority, which, upon being fairly canvassed, would not be found to bear the Test of Examination. In the long List of Cases which now occur at the Beginning of every Number of Reports, where Rules to shew Cause why there should not be new Trials are refused upon the first Impression of the Case, the Instances are not unfrequent of Points, which are at least of sufficient Importance to merit a deliberate Enquiry. The Delay of a second Argument, with the Exception of the Period of the long Vacation, is not considerable; and there is no Part of legal Proceedings, in which the Expense bears so small a Proportion to the Magnitude of the Object, as a solemn Argument. The strong Conviction of the Importance, which I have always felt and often expressed, of giving to every legal Discussion of which the Event might be material, as a Precedent, that mature Attention, which is the best Security from Error and Misconception, has received a material Confirmation from the very last Number of Reports that has hitherto reached me; wherein it is said by the Chief Justice of the Common Pleas—"I am afraid there is no Case from which, owing either to the Fallibility of the Judges who decided it, or some other Cause, an Argument like that which has now been made use of might not be raised for the Purpose of overturning the Judgment. I dare say it almost always happens, that among the Reasons given by the Judges for their Opinions, there is something dropped, either directly or collaterally, which, taken by itself, would be insufficient to support the Decision: and formerly, I remember, provided the Judgment, taken together, were sufficient, such Circumstances would have passed unnoticed." Powley *v.* Newton, 2 Marshall, 149.

The Circumstance that it always or indeed often happens that something is dropped by Judges which cannot be supported, cannot but be regarded as Matter of Regret, when it is recollected that, in forming an Opinion upon

the Effect of a particular Case, the general Course has been, not merely to look at the Point decided, as standing alone and unaccompanied by the Reasons of it, but to consider the Reasons as incorporated with the Decision; and although it is too much to expect that, in the Multiplicity of judicial Business, no Opinion shall be expressed which will not bear the Test of a critical Examination, it is certainly extremely desirable to avoid a Course which renders the Expression of such Opinions more probable than it would be, if the Forming, as well as the Expression of any Judgment, were reserved until the Court were fully in Possession of the View of the Case which may be presented by those who have made it the Subject of previous Attention; and if the Benefit of Dispatch were more generally regarded as subordinate to the higher Objects not only of coming to a correct Decision of the particular Question, but of rendering the Grounds and Motives of that Decision so clear and explicit, as to afford a secure Direction in all subsequent Cases affected by an Analogy of Principle.

But if a System of greater Deliberation is desirable with respect to Questions submitted to the solemn Consideration of the Courts, how much more important would it be to check the Practice of ascribing the Character of judicial Authority to the sudden Views of a Subject which may be taken upon Trials at Nisi Prius! and how much is it to be regretted that Collections of such Opinions are allowed to occupy so important a Place in our juridical Libraries, and are introduced into some of our Treatises as the Ground of general Propositions of Law! I apprehend that the Profession are becoming duly sensible of this Inconvenience; and some recent Allusions to the Use which is made of these Decisions, by the learned Judge whose Opinion has last been quoted, may have a Tendency to check a Practice so injurious to accurate Discussion, and prevent an Argument, supported by the correct Principles of legal Reasoning, from being overturned by the mere Authority of a Case in Mr. Peake or Mr. Espinasse. I am glad to learn that, in a new Edition of Comyns's Digest, undertaken by several learned Members of the Profession, a Resolution has been taken not to admit of the Introduction of any Nisi Prius Cases.

My own limited Sphere of Observation is almost entirely confined to this Department of judicial Business; and I have often most sensibly felt the Inconvenience which has resulted from indulging a Spirit of Anticipation, instead of dispassionately attending to the Suggestions, which, however imperfect, have not been hasty or inconsiderate, intended to be offered on Behalf of a Party whose Comfort or Ruin might depend on the Event; and the painful Situation of an Advocate condemned to enter into a desultory Combat with a Judge, who, by the premature Expression of his Opinion, may almost acquire the Feelings of a Party to the Cause; or, (which is still more distressing) reduced to relinquish the Maintenance of Rights which he is intrusted to support, and in favour of which he entertains a sincere Opinion, founded upon laborious Examination, in consequence of the Agitation resulting from so unequal a Contest. Whenever this Practice prevails, it is obvious that the Talent of snip-snap Altercation, and the Strength of Lungs in a Scramble for Attention, are Qualities of more Importance than any previous Application to the Elucidation of the real Merits of a Cause.

Decisions at Nisi Prius are sometimes suffered to acquire an Authority from the Acquiescence of Counsel of Eminence, who have declined submitting the Propriety of them to the Revision of the Court; but so many incidental Motives of Inconvenience, Weariness, and Expense may operate upon a Party submitting to the first Decision against him, that it is very seldom that this Argument can be relied upon with an adequate Confidence of its being well founded in Point of Fact; and even taking it at the highest, it has very little Claim to be ranked in Opposition to any immediate Arguments upon the Merits, which would otherwise be considered as intitled to serious Attention.—Connected with this Observation is the Influence sometimes ascribed to the tacit Authority of a Case, in which a Point that afterwards becomes the Subject of Controversy was involved, according to the Statement of the Facts; but which passed unnoticed in the Discussion of other Questions to which the Argument was particularly directed, and must have been taken for granted in order to render the actual Controversy at all material. To suppose that this arose from deliberate Intention, and from a settled Conviction that

the Point, if taken, would have been found untenable, is an Assumption which is often at Variance with the Truth of the Facts; and every Person's Experience will convince him of the many Instances in which he has entered into a Controversy upon a collateral Inquiry, which might have been prevented if a preliminary Ground of Argument had in proper Time occurred to his Attention. The Objection of such tacit Authorities can never be properly urged, when it is admitted that the Point supposed to be involved in them would, if presented, have been fairly susceptible of Doubt and Controversy. Much less can it be intitled to prevail in Opposition to what upon fair Investigation may be found to be the true Conclusion upon the Subject, independently of such supposed Authority.

These Observations were forcibly impressed on my Mind by the Case of Isherwood *v.* Oldknow, 3 M. and S. 382, which turned upon the important Question, whether an Action of Covenant could be maintained by a Person in Remainder upon a Lease made by a Tenant for Life, under a Power? and which certainly was open to very considerable Discussion; but in which considerable Reliance was placed upon the tacit Authority of former Cases, wherein the Discussion had turned upon the Conformity of Leases to the Power under which they possessed, in respect of Covenants entered into by the Lessee; and which Covenants I admit would not have been very material, if it had not been taken for granted that an Action could have been maintained upon them by the Party in Remainder: but the Point so taken for granted certainly was attended with sufficient Difficulty to render it manifest, that it had been rather overlooked in consequence of the Attention being directed to another Object, than abandoned upon deliberate Consideration, as unworthy of Argument.

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Upon a Case coming before a Court of Error or Appeal, I had conceived it to be clear, that the Question to be discussed would depend upon the Propriety of the original Judgment, as appearing upon the Face of authentic Proceedings, without Reference to any Statement of what passed in the original Discussion; but in Charnley *v.* Dunsavy, in the House of Lords, 2 Schoales and Lefroy, 690, an Opinion is strongly expressed by Lord Redesdale and Lord Eldon, that upon an Appeal in Equity no Point ought to be made at the Bar of the House, which was not made below, and which therefore may be considered as having been waved. If such Waver can be collected from the Course of the Proceedings themselves, I am perfectly ready to accede to this View of the Subject, and which, in many Cases, may be fairly taken upon Cases in Equity, as immediately arising on the Proceedings, without being formally stated. But in the Case of the King *v.* the West Riding of the County of York, 2 Dow. P. C. 2, Lord Eldon seems to adopt the same Principle, as applicable to a Case arising upon a Writ of Error from a Court of Law; deducing the Fact from the printed Authority of the Case, as contained in East's Reports. No Decision was pronounced upon the Question, the Objection being waved by the Counsel. But the Propriety of the Doctrine alluded to certainly requires a very serious Consideration. Admitting that it would be an Improvement in the Law if no Objections could be made in a Court of Error or Appeal, which was not formally put upon the Record as a Ground of Objection in the Court below, I think it will require much Consideration, before it can be admitted, that a Court of Error should give Judgment, according to the existing State of the Law, in Favour of a Proceeding confessedly erroneous. Waving the Observation that many Cases are allowed to pass without Argument in the original Court, with the express View of taking the Opinion of a Court of Error in the first Instance, the great Difficulty of the present Question relates to the Mode in which the Fact, as to what Objections were originally made, can be authentically ascertained; whether, in case of an Appeal to the House of Lords, it is to depend upon the Memory of any Noble Lord who may have concurred in the original Decision, so as to make a Distinction between the Case in which any such Lord may be present, and others; whether a Certificate shall be applied for to the original Court, as to the Recollection of the Arguments and Proceedings; whether the Matter shall be open to Suggestions, supported only by Altercation and opposite Statements at the Bar, or whether the Character of solemn Authority shall be applied to any acci-

dental Publications, in which the Proceedings may have been reported for the Use of the Profession. In the Introduction of any novel Practice by mere judicial Authority, it is impossible to give too minute and extended a Consideration to the Consequences to which it may lead; and therefore I have taken the Liberty of submitting these Observations to those who can best decide upon their Propriety.

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I am fully aware that in this Note I have digressed into the Examination of several Subjects not arising out of the Statute to which they are attached, nor very intimately connected with each other. But feeling that the Subjects adverted to are in themselves intimately connected with the beneficial Administration of the Law, I have ventured to trespass upon the Patience of the Public, by the Discussion of them in that Part of the Work which appeared to afford the fairest Opportunity for their Introduction.

## No. 3.

## 14 Edward III. stat. 1. c. 5. — Delays of Judgements in other Courts shall be redressed in Parliament.

*Ex Rot. in Turr.* Lond.

No. 3. 14 Edward III st. 1. c. 5.

" ITEM, Because divers Mischiefs have happened " for that in divers Places, as " well in the Chancery as in " the King's Bench, the Common Bench, and in the Exchequer before the Justices " assigned, and other Justices " to hear and determine deputed, the Judgements have " been delayed, sometime by " Difficulty, and sometime by " divers Opinions of the Judges, and sometime for some " other Cause;" ' it is assented, established, and accorded, That from henceforth at ' every Parliament shall be ' chosen a Prelate, two Earls, ' and two Barons, which shall ' have Commission and Power ' of the King to hear by Petition delivered to them, the ' Complaints of all those that ' will complain them of such ' Delays or Grievances done ' to them; and they shall have ' Power to cause to come before them at *Westminster*, or ' else where the Places of any ' of them shall be, the Tenor ' of Records and Processes of ' such Judgements so delayed,

ITEM pur ce qe moultz des meschiefs sont avenuz de ceo qe en diverses places aussibien en la Chauncellerie en le Bank le Roi le commune Bank & Leschequer les Justices assignez & autres Justices a oyer & terminer deputez les jugementz si ount este delaiez a la foitz par difficulte & ascun foitz par divers oppinions des Jugges & a la foitz par autre cause si est assentuz establiz & acordez qe desore en avant a chescun parlement soient esluz un Prelat deux Countes & deux Barons qe eient commission & poair du Roi doier par petition a eux liveree les pleintes de touz ceux qe pleindre se verront de tieux delaies ou grevances faites a eux & eient poair a faire venir devant eux a Westm' ou aillours ou les places serront ou ascun des places serra les tenours dez recordz & proces de tieux jugementz ensi delaiez & facent venir devant eux meismes lez Justices qe serront adonqes presentz pur oyer lour cause & lour resons des tieux delaies queux cause & reson ensi oiez

*Ex Rot. in Turr.* Lond.

par bon avis de eux meismes des Chancellier Tresorer Justices del un Bank & del autre & autres de counseil le Roi taunz & tieux come ils verront qe busoignables serront aillent avant a prendre bon acorde & bon juggement faire & selonc meisme laccord ensi pris soit remande as Justices devant queux le plee pent le tenur du dit record ensemblement ove tieu juggement qe serra acorde & qe eux aillent hastivement a juggement rendre solonc meisme laccord. Et en cas qe lour semble qe la difficulte soit si grande qele ne poet pas bonement estre termine sanz assent du parlement soit la dit tenour ou tenours portez par les ditz Prelat Contes & Barons a proschein parlement & illoeqes soit pris final acord queu juggement se devera faire en tiel cas & selonc cel acord soit mande a Justices devant quieux le plee pent qils aillent a juggement rendre sanz delay. Et pur commencier a faire remedie sur cest establissement si est assentuz qe commission & poair soit fait a Lercevesqe de Canterbirs les Contes d Arundell & de Huntingdon le Seignur Wake & monsieur Rauf Basset adurer tanqe a prochein parlement. Et coment qe les ministres eient fait serement avant ces heures ne pur quant pur eux rementiner de mesme le serement si assentuz qe aussi bien Chauncellier Tresorer Gardein du Privee Seal Justices del un Bank & del autre Chancellier & Barons del Escheqer come Justices assinez & touz ceux qe se meddlent es dites places desoutz eux selonc lavisement des ditz Ercevesque Contes & Barons facent ser-

'and to cause the same Justices to come before them, which shall be then present, to hear their Cause and Reasons of such Delay; which Cause and Reason so heard, by good Advice of themselves, the Chancellor, Treasurer, the Justices of the one Bench and of the other, and other of the King's Council, as many and such as they shall think convenient, shall proceed to take a good Accord, and make a good Judgement; and according to the same Accord so taken, the Tenor of the said Record, together with the Judgement which shall be accorded, shall 'be remanded before the Justices, before whom the Plea did depend, and that they hastily go to give Judgement 'according to the same Re- 'cord; and in case it seemeth 'to them, that the Difficulty be so great, that it may not well 'be determined without As- 'sent of the Parliament, That 'the said Tenor or Tenors shall be brought by the said 'Prelate, Earls, and Barons 'unto the next Parliament, and 'there shall be a final Accord 'taken what Judgement ought 'to be given in this Case; and 'according to this Accord it 'shall be commanded to the 'Judges, before whom the Plea 'did depend, that they shall 'proceed to give Judgement 'without Delay. And to be- 'gin to do Remedy upon this 'Ordinance, it is assented, 'that a Commission and a 'Power shall be granted to the 'Archbishop of *Canterbury*, 'the Earls of *Arundel* and *Huntingdon*, the Lord of *Wake*, 'and the Lord *Ralfe Basset*, to

No. 3. 14 Edward III. st. 1. c. 5.

No. 3.
14 Edward III. st. 1. c. 5.

'endure till the next Parliament. And though the Ministers have made an Oath before this Time, yet nevertheless to remember them of the same Oath, it is assented, that as well the Chancellor, Treasurer, Keeper of the Privy Seal, the Justices of the one Bench and of the other, the Chancellor, Barons of the Exchequer, as the Justices assigned, and all they that do meddle in the said Places under them, by the Advice of the same Archbishop, Earls, and Barons, shall make an Oath well and lawfully to serve the King and his People. And by the Advice of the said Prelate, Earls and Barons, be it ordained to increase the Number of the Ministers when need shall be, and them to diminish in the same Manner, and so from Time to Time, when Officers shall be newly put in the said Offices, they shall be sworn in the same Manner.' (1.)

The Officers Oath to serve the King and his People.

*Ex Rot. in Turr.* Lond.

ment de bien & loialment servir au Roi & au poeple. Et par avisement des avantditz Prelat Contes & Barons soit ordene deneresttre le nombre des ministres par la ou il busoigne & de le amenuser en mesme la manere & issint de temps en temps quant officers serront novelement mys en les ditz offices soient en la manere avantdite serementez.

(1.) I have chosen to insert this obsolete Statute, upon a Supposition that at some future Period it may be thought eligible to revive the Institution which it prescribes, if not according to the literal Precedent, by the Adoption of a Tribunal for the Decision of Questions of Error and Appeal, founded upon analogous Principles. The overwhelming Increase in every Department of public Business, judicial or parliamentary, requires a Degree of Application very greatly exceeding any that was requisite, not only at the Time of the original Establishment, but even within the Memory of the present Generation. In order to meet this Increase of Business, with a suitable Attention to Convenience and Dispatch, different Arrangements have been from Time to Time made, and others will probably be rendered equally necessary. I do not think that it would be desirable altogether to abolish the Jurisdiction of the House of Lords, as an aggregate Body, in Matters of judicial Appeal; and think it would be preferable, if any Establishment should be adopted of the Nature suggested, to reserve a Power by special Order of hearing such Cases at the Bar of the House. It is notorious that the Solemnity of that high Tribunal, according to the existing Practice, is attached rather to the Place than to the Course of Proceeding, and that the Majority of Appeals from the three Parts of the United Kingdom are in Substance and Effect to the Lord Chancellor individually; the Presence of two other Peers being necessary, but the particular Individuals being in a constant Course of Fluctuation, even during the Course of the particular Cause; and that the Motion of the Lord Chancellor is in Effect the Judgment of the Case. At present a very honorable Exception prevails to this Practice, in the habitual Attendance of a noble Person, formerly holding an exalted Judicial Station, and whose legal Erudition is universally admitted to be of the highest

Degree. The same Assistance would in all Probability be afforded in case of a different Arrangement being made, according to the Idea at present suggested. I have only a Recollection of two Instances, in a Period of upwards of thirty Years, in which the judicial Business of the House of Lords, in Cases of Appeal, was considered as an Object of general Attention by the Members of that Body: the one was the well-known Case of the Bishop of London *v.* Fytche, in which a Decision took place contrary to the Opinion of the Majority of the Judges, and contrary to what has been generally considered, independently of the direct Authority of the Judgment, as the true legal Conclusion upon the Subject: the other was an Appeal from the Court of Chancery, respecting the Appointment of a Guardian; in the Decision of which, so far as appeared from the diurnal Publications, there was a greater Admixture of personal and political Feeling, than appears in the accustomed and ordinary Administration of Justice. There are some very important Observations on this Subject at the Conclusion of Sir Matthew Hale's valuable Work on the Jurisdiction of the Lords' House of Parliament.

The Value of the Alteration in the judicial Proceedings of the House of Commons, by the Appointment of Committees for the Trial of controverted Elections, is generally felt and admitted, as being one of the greatest Improvements of the Constitution in modern Times. And I apprehend that the Extension of a similar Principle, not only to the judicial Functions of the House of Lords, but to the legislative Proceedings of both Houses, upon Subjects of a local and personal Nature, would be attended with very beneficial Consequences.

## No. 4.

## 1 Edward III. stat. 1. c. 4.—Trial of an Averment in a Writ of false Judgment.

No. 4. 1 Edward III. st. 1. c. 4.

*Ex Rot. in Turr. Lond.*

AUXINT est accorde ordine et establi en amendement de la lei qe countre record de Court le quel record vient en la Court le Roi par bref de faux juggement en cas ou la partie dist qe le record est autre qe la Court ne recorde soit receu averement de bone pais & de ceux qe furent presentz en la Court quant le recorde se fist si tieux veignent ove les autres du pais par retourn de visc' & sils ne veignent soit lenqueste prise par bone pays.

ITEM, It is accorded, ordained, and established 'in Amendment of the Law, 'That when a Record cometh 'into the King's Court by 'Writ of false Judgment, in 'case where the Party alledgeth that the Record is otherwise than the Court doth 'record the same, the Averment shall be received of the 'good Country, and of them 'which were present in the 'Court when the Record was 'made, if they do come with 'others of the Country by the 'Sheriff's Return; and if they 'come not, the Inquest shall 'be taken by the good Country.'

## No. 5.

### 31 Edward III. stat. 1. c. 12.—The Chancellor and Lord Treasurer shall examine erroneous Judgments given in the Exchequer.

No. 5. 31 Edward III. st. 1. c. 12.

'ITEM it is accorded and established, That in all Cases touching the King, or other Persons, where a Man complaineth of Error made in Process in the Exchequer, The Chancellor and Treasurer shall cause to come before them in any Chamber of Council nigh the Exchequer, the Record of the Process out of the Exchequer, taking to them the Justices and other Sage Persons, such as to them seemeth to be taken; and shall also cause to be called before them the Barons of the Exchequer, to hear their Informations, and the Causes of their Judgements, and thereupon shall duly examine the Business; and if any Error be found, they shall correct and amend the Rolls, and after send them into the Exchequer for to make thereof Execution as pertaineth.'

*Ex Rot. in Turr.* Lond.

ITEM acorde est & establi qe en touz cas touchauntz le Roi ou autres persones ou homme se pleinte derrour fait en proces en Lescheqier les Chaunceller & Tresorer facent venir devant eux en ascune chambre du conseil joust Lescheqier le record du proces hors de Lescheqier & prises a eux Justices & autres sages tieux come lour semblera qe sont aprendre & facent auxint appeller devant eux les Barons de Lescheqier pur oier lour informations & les causes de lour juggement & sur ceo facent duement examiner la busoigne & si ascun errour y soit trove les facent corriger & amendre les roules & puis reenvoier les en Lescheqier pur faire ent execution sicome appertient.

## No. 6.

### 9 Richard II. c. 3.—A Writ of Error or Attaint maintainable by him in the Reversion.

No. 6. 9 Richard II. c. 3.

He in the Reversion shall have an Attaint or Writ of Error upon a false Verdict found, or an erroneous Judgment given against the particular Tenant.

'ITEM it is accorded and assented, That if the Tenant for Term of Life, Tenant in Dower, Tenant by the Courtesey of *England*, or Tenant in Tail after Possibility of Issue extinct, be impleaded, and plead to an Inquest, and lose by the Oath of Twelve, or by Default, or in other Manner,

ITEM accordez est & assentuz qe si tenant a terme de vie tenant en dower tenant par ley d'Engleterre ou tenant en la taille apres possibilite de issue esteint soient empledez & pledent al enquest & perdont par serement de dusze ou qils perdont par defaute ou en autre manere qe celluy a qi la reversion de tenementz ensy

*Ex Rot. in Turr.* Lond.

perduz appendoit a temps de tiel Jugement rendu ses heirs ou successours eient action par brief dattaindre le dit serement sils voillent assigner mesme le serement estre falx & auxint par brief derrour si errour y soit trove en le record de tiel jugement sibien en la vie des ditz tenantz qensy perdont come apres lour mort & si tiel jugement erroyne soit reverse ou tiel faulx serement soit trove qe le tenant qi perdi par le primer jugement sil soit en vie soit restitut a la possession des tenementz ensy perduz ove les issues en le mesne temps & le partie pursuant a les arrerages de la rente si ascun a luy soit due de mesmes les tenementz Et si tiel tenant soit mort a temps del jugement rendu sur tielx briefs datteynt & derrour qe restitution de tielx tenementz soit fait a la partie pursuant ove les issues puis la mort del tenant suisdit ensemblement ove les arrerages del rent si ascun a luy fuist due en la vie de tiel tenant.

'that he to whom the Reversion of the Tenements so lost doth appertain at the 'Time of such Judgement 'given, his Heirs or Successors, shall have an Action by 'Writ of Attaint, to attaint 'the same Oath, if they will 'assign the same Oath to be 'false, and also by Writ of 'Error, if Error be found in 'the Record of such Judgement, as well as in the Life 'of such Tenants that so do 'lose, as after their Death. 'And if such Judgement erroneous be reversed, or such 'false Oath be found, that the 'Tenant which did lose by 'the first Judgement, if he be 'in Life, shall be restored to 'his Possession of the Tenements so lost, with the Issues 'in the mean Time, and the 'Party pursuing, to the Arrearages of the Rent, if any 'be due of the same Tenements. And if such Tenant 'be dead at the Time of the 'Judgement given upon such 'Writs of Attaint and of 'Error, that Restitution of 'the Tenements be made 'to the Party pursuing, with 'the Issues after the Death of 'the said Tenant, together 'with the Arrearages of the 'Rent, if any to him were 'due in the Life of the said 'Tenant.

No. 6. 9 Richard II. c. 3.

Purveu ne pur qant coment qe le tenant qensy perdi par le primer jugement soit en vie & le partie pursuant voille alleger qe mesme le tenant fuist de covine & assent del demandant qe recovery qe tielx tenementz deussent estre perduz qe restitution de mesmes les tenementez soit fait a mesme la partie pursuant ove

'II. Provided nevertheless, that although the Tenant which so did lose by the 'first Judgement be in Life, 'and the Party pursuing will 'allege that the same Tenant 'was of Covin, and of Assent 'of the Demandant which recovered, that such Tenements ought to be lost, that 'Restitution of the same Te-

He in the Reversion alledgeth that the particular Tenant was of Covin with the Demandant.

No. 6.
9 Richard II. c. 3.

The particular Tenants Remedy to traverse the Covin.

'nements be made to the same 'Party pursuing, with the Issues and Arrearages, as afore 'is said, saving to such Tenant his Action by Writ of '*Scire facias*, out of the same 'Judgement so reversed or 'given, or Writ of Attaint, 'if he will traverse the Covin 'and Assent aforesaid, and 'otherwise not. And that this 'Statute hold Place of Judgements to be given in Time to 'come, and also of two Judgements late given in the King's 'Bench, in two Pleas of Error, the one betwixt *Edmund* '*Frances* and *Ideyn* his Wife, 'Demandants, and *Robert Westby* and other Tenants of certain Tenements in *Oxenford*, 'and in the Suburbs of the 'same Town, and the other 'betwixt the said *Edmund* and '*Ideyn* Demandants, and *Richard Cornwall* and *Isabel* his 'Wife, and others Tenants of 'certain Tenements in the 'same Town, of which Tenements the Reversion at the 'Time of the said two Judgements given did pertain to 'the Master and Scholars of 'the College of the *University* '*Hall* in *Oxenford*, as it is 'said, so that the Master and 'Scholars may have and do 'their Suit by Writ of Attaint 'or of Error of the same Judgements, as to them best shall 'seem, according to the Form 'of this Statute.'

*Ex Rot. in Turr.* Lond.

les issues & arrerages come devant est dit savant a tiel tenant action par scire facias hors de mesme le jugement ensy reverse ou rendu en le brief datainte sil voille traverser les covyne & assent avantditz & autrement nient. Et qe ceste estatut tiegne lieu des jugementz a rendre en temps avenir & auxint de deux jugementez nadgairs renduz en Bank le Roy en deux plees derrour lun entre Edmund Franceys & Idoine sa femme demandantz & Robert de Westby & autres tenantz de certains tenementz en Oxenford & le suburbe de mesme la ville & lautre entre les ditz Edmond & Idoine demandantz & Richard Cornewayle & Isabell sa femme & autres tenantz de certeins tenementz en mesme la ville des queux tenementz le reversion appendoit au temps des ditz deux jugementz renduz as maistre & escolers del college de la Sale del Universite d Oxenford a ce qest dit & qe les ditz maistre & escolers poont avoir & faire lour suite par brief dateinte ou derrour de mesme les jugementz come meultz lour semblera solonc la forme de cest estatut.'

## No. 7.

### 4 Henry IV. c. 23.—Judgements given shall continue until they shall be reversed by Attaint or Error.

*Ex Rot. in Turr.* Lond.

ITEM come sibien en plee roial come personel apree juggement renduz en les courtes nostre Seignur le Roy les parties sont faitz venir sur griefe peine a la foith devant le Roy mesmes a la foith devant le conseil du Roy & a la foith en parlement de ent respondre de novel a grant anientisement des parties suisditz & en subversion de la commune loie de la terre ordeignez est & establiz qapres juggement rendu en les courtes nostre Seignur le Roy les parties & leur heirs en soient en pees tanqe le juggement soit anientiz par atteinte ou par errour si errour y ad come il ad este usez par la loie en temps des progenitours nostre dit Seignur le Roy.

" ITEM, Where as well in " Plea real as in Plea per- " sonal, after Judgement given " in the Courts of our Lord " the King, the Parties be " made to come upon grievous " Pain, sometime before the " King himself, sometime be- " fore the King's Council, and " sometimes to the Parliament, " to answer there of new, to the " great impoverishing of the " Parties aforesaid, and in the " Subversion of the common " Law of the Land;" it is or- ' dained and stablished, That ' after Judgement given in the ' Courts of our Lord the King, ' the Parties and their Heirs ' shall be thereof in Peace, ' until the Judgement be un- ' done by Attaint or by Error, ' if there be Error, as hath ' been used by the Laws in the ' Times of the King's Progeni- ' tors.'

No. 7. 4 Henry IV c. 23.

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## No. 8.

### 3 Henry VII. c. 10.—Costs, &c. awarded to the Plaintiff, where the Defendant sueth a Writ of Error.

' ITEM, That where oftentimes Plaintiff or Demandant, ' Plaintiffs or Demandants, that have Judgement to reco- ' ver, be delayed of Execution, for that the Defendant or ' Tenant, Defendants or Tenants, against whom Judgement is ' given, or other that been bound by the said Judgement, sueth ' a Writ or Writs of Error to adnul and reverse the said ' Judgement, to the Intent only to delay Execution of the said ' Judgement: It is enacted, ordained, and established, by the ' Advice of the Lords Spiritual and Temporal, and at the ' Prayer of the Commons, in the said Parliament assembled, and by Authority of the same, That if any such Defendant or Tenant, (1.) Defendants or Tenants, or if any other that shall be

No. 8. 3 Henry VII c. 10.

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(1.) Extended to Writs of Error sued by Plaintiff or Demandant by 8 and 9 W. III. c. 11, sec. 2. ante. Class XI. No. 8.

No. 8. 3 Henry VII. bound by the said Judgment, sue, afore Execution (2.) had, any Writ of Error (3.) to reverse any such Judgement, in delaying of Execution, that then if the said Judgement be affirmed (4.) good the said Writ of Error, and not erroneous, or that the said Writ of Error be discontinued in the Default of the Party, or that any Person or Persons that sueth Writ or Writs of Error, be nonsued (5.) in the same, that then the said Person or Persons, against whom the said Writ of Error is sued, shall recover his Costs (6.) and Damage (7.) for his Delay and wrongful

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(2.) The Statute does not apply if the Writ of Error is brought after Execution; Eardley *v.* Turnock, Cro. Jac. 636; vi. ac. 2 Str. 1199. So after Execution as to Damages and Costs in Ejectment, although previous to the Execution for the Term; Earl of Pembroke *v.* Boston, Cro. Car. 173.

(3.) This extends to Cases in which the Plaintiff is not entitled to Costs in the original Action; Ferguson *v.* Rowlinson, Andr. 113, 2 Str. 1084; (accord Cro. Eliz. 616) overruling Smith *v.* Smith, Cro. Car. 425; Winne *v.* Lloyd, 1 Lev. 146, Raym. 134, contra.

(4.) Extended to Cases where the Writ of Error is quashed, 4 Anne, c. 16, ante. Pt. I. Cl. I. No. 23.

(5.) The Act does not extend to the Case of a Writ of Error nonprossed before the Transcript of the Record; Salt *v.* Richards, 7 E. 111.

(6.) Double Costs, in Cases of Error after Judgment, are given by Stat. 13 Charles II. stat. 2. c. 2. ante. Class III. No. 13.

(7.) The following View of the Practice of the Courts respecting Damages in Error is, with the Exception of the Passage in Brackets, extracted from Serjeant Williams's Note to 2 Saund. 101. w.—"On a Writ of Error returnable in the King's Bench, that Court, on Motion, will order the Master to compute Interest on the Sum recovered, by Way of Damages, from the Day of signing final Judgment below down to the Time of Affirmance, and to add the same to the Costs taxed for the Plaintiff in the original Action; Doug. 752, Zinck *v.* Langton, note 3; and see 2 Str. 931, Bishop of London *v.* Mercers' Company; 2 Burr. 1096, 1097, Bodily *v.* Bellamy; S. C. 1 Blac. Rep. 267, 268; 2 Term Rep. 79, Entwistle *v.* Shepherd. And if, by the Course of the Court of Error, Interest is not computed in the Allowance of Costs on the Affirmance of the Judgment, the Jury may give Interest by Way of Damages from the Time of signing the original Judgment; 2 Term Rep. 79, Entwistle *v.* Shepherd. But in Debt on a Recognizance against Bail in Error in the Exchequer Chamber, the Bail are not liable to pay Interest between the Time of the original Judgment and Affirmance; tho' they are liable to Interest from the Time of the Affirmance; 4 Burr. 2127, Welford *v.* Davidson; 2 Term Rep. 57, Frith *v.* Leroux. In the Exchequer Chamber the Officer is bound to allow double Costs to the Defendant in Error on the Affirmance of a Judgment; but it is a Matter entirely in the Discretion of the Court to allow Interest on the Affirmance; 2 H. Blac. 284, Shepherd *v.* Mackreth. [Where the Declaration contained two Counts, one for a Sum certain, the other for unliquidated Damages, and a general Verdict was given, the Court of Exchequer Chamber held that Interest could not be allowed; Martin *v.* Emmote, 2 Marshall, 230. Previous to the Case of Sykes *v.* Harrison, 1 B. and P. 29, the usual Course was to allow only four per cent.; but in that Case the Court intimated that in future the Allowance would be five per cent.] In the Court holden before the Lord Chancellor and Treasurer and Judges (under the 31 Edward III.) for examining erroneous Judgments given in the Court of Exchequer, the Practice is to give Interest from the Day of signing Judgment to the Day of affirming it there, computed according to the current, and not the strictly legal, Rate of Interest; 2 Burr. 1097, Bodily *v.* Bellamy. In the House of Lords, sometimes very large, sometimes very small Costs are given, according to the Nature of the Case, and the Reasonableness or Unreasonableness of litigating the Judgment of the Court below; ibid: and in order to mitigate Costs, the Plaintiff will sometimes withdraw his Errors; Tidd's Prac. K. B. 1169." And see Johnes *v.* Johnes, 1 Dow, P. C. 1.

Vexation in the same, by Discretion of the Justice (8.) afore whom the said Writ of Error is sued. No. 8. 3 Henry VII. c. 10.

(8.) This means the Court of Error; Salt v. Richards, 7 E. III; and when the House of Lords affirmed the Judgment, and remitted the Record without awarding Costs in Parliament, it was ruled that the King's Bench could not order the Master to allow the Costs in Parliament; Beale v. Thompson, 2 M. and S. 219.

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## No. 9.

### 19 Henry VII. c. 20. — Writs of Error.

No. 9. 19 Henry VII. c. 20.

A Confirmation of 3 H. 7. c. 10, touching Costs awarded to the Plaintiff, where the Defendant sueth a Writ of Error.

'PRAYEN the Commons in this present Parliament assembled, That where at a Parliament holden at *Westminster*, 'in the third Year of the Reign of our Sovereign Lord the 'King that now is, by the Advice of the Lords Spiritual 'and Temporal, and the Commons, in the same Parliament 'assembled, and by Authority of the same, it was enacted, 'ordained, and established, among other Things, That if any 'Defendant or Tenant, Defendants or Tenants, or any other 'that shall be bound by any Judgement, sue, afore Execution 'had, any Writ of Error to reverse any such Judgement, in 'delaying of Execution of the Party, that then if the same 'Judgement be affirmed good in the said Writ of Error, and 'not erroneous, or that the said Writ of Error be discontinued 'in the Default of the Party, or the Person or Persons that 'sueth the Writ or Writs of Error be nonsuited in the same, 'that then the said Person or Persons, against whom the said 'Writ of Error is so sued, shall recover his Costs and Damages for his Delay and wrongful Vexation in the same, by 'Discretion of the Justices afore whom the said Writ of Error 'is sued: Which Act or Ordinance hath not been as yet duly 'put in Execution, by reason whereof, as well Plaintiffs as Demandants, in divers Actions by them sued sith the making of 'the said Statute, have been oftentimes delayed of their Execution, to their great and importable Hurt, Loss, and 'Charges:' Wherefore the King our Sovereign Lord, by the Advice of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, ordaineth, establisheth, and enacteth, That the said Act made the third Year of his Reign, concerning the Premisses, be good and effectual, and that from henceforth it be duly put in Execution.

No. 10.

27 Elizabeth, c. 8. — An Act for Redress of erroneous Judgments in the Court commonly called the King's Bench.

No. 10.
27 Elizabeth, c. 8.

Erroneous Judgments given in the King's Bench by the Common Law are only reversable in Parliament.

'FORASMUCH as erroneous Judgments given in the Court 'called the King's Bench, are only to be reformed by the 'High Court of Parliament: which Court of Parliament is not 'in these Days so often holden as in ancient Time it hath 'been, neither yet (in respect of greater Affairs of this Realm) 'such erroneous Judgments can be well considered of and de-'termined during the Time of the Parliament, whereby the 'Subjects of this Realm are greatly hindred and delayed of 'Justice in such Cases.'

Before whom Judgments given in certain Actions in the King's Bench may be examined.

II. Be it therefore enacted by the Authority of this present Parliament, That where any Judgment shall at any Time hereafter be given in the said Court of the King's Bench in any Suit or Action of Debt, Detinue, Covenant, Account, Action upon the Case, *Ejectione firmæ*, or Trespass, first commenced or to be first commenced there, (other than such only where the Queen's Majesty shall be Party) the Party Plaintiff or Defendant, against whom any such Judgment shall be given, may at his Election sue forth out of the Court of Chancery a special Writ of Error to be devised in the said Court of Chancery, directed to the Chief Justice of the said Court of the King's Bench for the Time being, commanding him to cause the said Record, and all Things concerning the said Judgment to be brought before the Justices of the Common Bench and the Barons of the Exchequer, into the Exchequer-Chamber, there to be examined by the said Justices of the Common Bench and Barons aforesaid; which said Justices of the Common Bench, and such Barons of the Exchequer as are of the Coif, or six of them at the least, by Virtue of this present Act, shall thereupon have full Power and Authority to examine all such Errors as shall be assigned or found in or upon any such Judgment; and thereupon to reverse or affirm the said Judgment, as the Law shall require, other than for Errors to be assigned or found for or concerning the Jurisdiction of the said Court of King's Bench, or for any Want of Form in any Writ, Return, Plaint, Bill, Declaration or other Pleading, Process, Verdict or Proceeding whatsoever: and that after that the said Judgment shall be affirmed or reversed, the said Record and all Things concerning the same shall be removed and brought back into the said Court of the King's Bench, that such further Proceeding may be thereupon, as well for Execution as otherwise, as shall appertain.

Erroneous Judgment examined in Parliament.

III. And be it further enacted, That such Reversal or Affirmation of any such former Judgment shall not be so final, but that the Party who findeth him grieved therewith, shall and may sue in the High Court of Parliament for the further and due Examination of the said Judgment, in such Sort as is now used upon erroneous Judgments in the said Court of King's Bench. 14 Ed. 3. Stat. 1 cap 5. 31 Eliz. cap. 1.

## No. 11.

### 31 Elizabeth, c. 1.—An Act against Discontinuances of Writs of Error in the Courts of Exchequer and King's Bench.

No. 11. 31 Elizabeth, c. 1.

'WHEREAS by an Estatute made in the xxxi. Year of the 'Reign of King *Edward* the Third, it is enacted, 'that upon Complaint concerning Error made in the Exche-'quer touching the King or other Persons, the Lord Chan-'cellor and Lord Treasurer shall do to come before them in 'any Chamber of Council nigh the Exchequer, the Record 'and Process of the Exchequer, and taking to them such Jus-'tices and other sage Persons, as to them shall be thought 'meet, shall hear and determine such Errors, as by the said 'Estatute more at large appeareth: And whereas those two 'being great Officers of the Realm are employed, not only in 'their several Offices and Places of Justice elsewhere, but also 'for other weighty Affairs of the Realm in Council, attendant 'on the Queen's Majesty's Person and otherwise, they be 'many Times upon sudden Warning called away, in such wise 'as they both many Times, and sometimes neither of them, 'can be present in the Exchequer at their Day of Adjourn-'ment in such Suit of Error; and then by not coming of them 'at the Day of Adjournment, every such Writ of Error 'depending is by the Laws of the Realm discontinued, and 'the Party cannot proceed, but must begin his Suit of 'new, to the great Loss of the Party and Hinderance of 'Justice:' For Remedy whereof, be it ordained and enacted by Authority of this present Parliament, That the not coming of the Lord Chancellor and Lord Treasurer, or of either of them, at the Day of Adjournment in any such Suit of Error depending by Virtue of the said former Estatute, shall not be any Discontinuance of any such Writ of Error: But if both the Chief Justices of either Bench, or any one of the said great Officers, the Lord Chancellor or Lord Treasurer, shall come to the Exchequer Chamber, and there be present at the Day of Adjournment in such Suit of Error, it shall be no Discontinuance, but the Suit shall proceed in Law to all Intents and Purposes, as if both the Lord Chancellor and Lord Treasurer had come and been present at the Day and Place of Adjournment: Provided always, that no Judgment shall be given in any such Suit or Writ of Error, unless both the Lord Chancellor and Lord Treasurer shall be present thereat.

The not coming of the Lord Chancellor and Lord Treasurer shall be no Discontinuance of Writs of Error.

No Judgment to be given unless both the Lords be present.

'II. And whereas in the Parliament holden in the xxvii 'Year of the Reign of our most gracious Sovereign Lady the 'Queen's Majesty, one Act or Statute was made, intituled, '"An Act for Redress of erroneous Judgments in the Court '"commonly called the King's Bench;" by which it is amongst 'other Things enacted, That where any Judgment shall at any 'Time then after be given in the said Court of King's Bench, 'in any Suit or Action of Debt, Detinue, Covenant, Account,

27 El. c. 8.

No. 11. 31 Elizabeth, c. 1.

'Action upon the Case, *Ejectione firmæ*, or Trespass, first 'commenced or to be first commenced there, other than such 'only where the Queen's Majesty shall be Party; the Party 'Plaintiff or Defendant against whom any such Judgment shall 'be given, may at his Election sue forth out of the Court of Chan- 'cery a special Writ of Error to be devised in the said Court of 'Chancery, directed to the Chief Justice of the said Court of 'King's Bench for the Time being, commanding him to cause 'the said Record, and all Things concerning the said Judgment, 'to be brought before the Justices of the Common Bench and the 'Barons of the Exchequer, into the Exchequer-Chamber, there 'to be examined by the said Justices of the common Bench and 'Barons aforesaid. Which said Justices of the common Bench, 'and such Barons of the Exchequer as are of the Degree of the 'Coif, or six of them at the least, by Virtue of the same Act, 'shall thereupon have full Power and Authority to examine all 'such Errors as shall be assigned or found in or upon any such 'Judgment, and thereupon to reverse or affirm the said Judg- 'ment, as the Law shall require, other than for Errors to be 'assigned or found for or concerning the Jurisdiction of the 'said Court of King's Bench, or for any Want of Form in any 'Writ, Return, Plaint, Bill, Declaration, or other Pleading, 'Process, Verdict, or Proceeding whatsoever: Forasmuch as 'it doth many Times fall out, that the full Number of the said 'Justices of the common Bench and Barons of the Exchequer, 'so authorized by the said Statute, sometimes for want of 'Health, sometimes through other weighty Services and ear- 'nest Occasions, cannot be present at the Days and Times of 'the Returns and Continuances of the same Writs of Error; 'and by Reason of their Absence and not coming, the said 'Writs of Error are discontinued, Justice delayed, and the 'Parties put to begin new Suit, to their great Charges and 'Prejudice:' For Remedy thereof be it also enacted by the Authority aforesaid, That from henceforth, if the full Number of the Justices and Barons authorised by the said Act come not at the Day or Time of Return or Continuance of any such Writ of Error, that it shall be lawful for any three of the said Justices and Barons, at every of the said Days and Times, to receive Writs of Error, to award Process thereupon, to make and prefix Days from Time and Time of and for the Continuance of all such Writs of Error as shall be there returned, certified or depending. And that the same shall be to these Respects as good and available as if all the Justices and Barons authorised by the same Act were present. And that the Justices and Barons authorised by the said Statute, may after that proceed in all those Cases, in such Sort to all Intents, as they may do in other Cases mentioned in the said Statute; any not coming of any the said Justices or Barons notwithstanding.

Three Justices and Barons may receive and continue Writs of Error, &c.

III. Provided nevertheless, That no Judgment shall be given in any such Suit of Error, unless it be by such full Number of the said Justices and Barons as are in that Behalf authorised and appointed by the said Act.

Judgment may be given by six Justices and Barons.

IV. Provided also, and be it nevertheless enacted by the Authority aforesaid, that the Party Plaintiff or Defendant, against whom any such Judgment hath been heretofore or hereafter shall be given in the said Court of King's Bench, may at his Election sue in the High Court of Parliament for the Reversal of any such Judgment as heretofore hath been usual or accustomed; any Thing in this Statute, or in the said former Act to the contrary thereof notwithstanding.

No. 11. 31 Elizabeth.

The Plaintiff in Error may have his Writ returnable in Parliament at his Election.

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## No. 12.

3 James I. c. 8.—An Act to avoid unnecessary Delays of Executions.

[See the last Class.]

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## No. 13.

Charles II. st. 2. c. 2. — An Act for Prevention of Vexations and Oppressions by Arrests, and of Delays in Suits of Law.

[Inserted at length, Class III. No. 13.]

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## No. 14.

16 Charles II. c. 2.—An Act for preventing of Abatements of Writs of Error upon Judgements in the Exchequer.

No. 14. 16 Charles II. c. 2.

31 Eliz. c. 1.

31 Ed. 3. st. 1. c. 12.

'WHEREAS by a Statute made in the one and thirtieth Year of the Reign of the late Queen *Elizabeth*, it is enacted, 'That the not coming of the Lord Chancellor and Lord Treasurer, or either of them, at the Day of Adjournment, in any Suit of 'Error depending by virtue of the Statute of the one and thirtieth Year of the Reign of King *Edward* the Third therein 'mentioned, concerning Error made in the Exchequer, shall 'not be any Discontinuance of any such Writ of Error; but if 'both the Chief Justices of either Bench, or any one of the said 'Great Officers, the Lord Chancellor or Lord Treasurer, shall 'come to the Exchequer Chamber, and there be present at the 'Day of Adjournment in such Suit of Error, it shall be no 'Discontinuance, but the Suit shall proceed in Law, to all 'Intents and Purposes, as if both the Lord Chancellor and 'Lord Treasurer had comen, and been present at the Day and 'Place of Adjournment: Which Statute doth not provide a 'Remedy, in case the said Lord Chancellor and Lord Treasurer, or either of them, shall not be present at the Days and 'Times of the Returns of such Writs of Error, although it be 'within the same Mischief, Justice being delayed, and the

No. 14. 16 Charles II. c. 2.

'Parties in such Cases being put to begin new Suits, to their 'great Charges and Prejudice, by reason of the Absence and 'not coming of the said Great Officers:'

The not coming of the Lord Chancellor or Lord Treasurer.

II. Be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That the not coming of the Lord Chancellor and Lord Treasurer, or either of them, at the Day of Return of any Writ of Error to be sued forth by virtue of the said Statute made in the said one and thirtieth Year of the Reign of the said King *Edward* the Third, shall not cause any Abatement or Discontinuance of any such Writ of Error: But if both the Chief Justices of either Bench, or either of them, or any one of the said Great Officers, the Lord Chancellor or Lord Treasurer, shall come to the Exchequer Chamber, and there be present at the Day of Return of any such Writ of Error, it shall be no Abatement or Discontinuance, but the Suit shall proceed in Law, to all Intents and Purposes, as if both the Lord Chancellor and Lord Treasurer had comen and been present at the Day and Place of the Return of such Writ.

III. Provided always, That no Judgement shall be given in any such Suit or Writ of Error, unless both the Lord Chancellor and the Lord Treasurer shall be present thereat.

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## No. 15.

### 16 and 17 Charles II. c. 8.—An Act to prevent Arrests of Judgement, and superseding Executions.

[Inserted ante. Class VI. No. 13.—The Sections respecting Bail in Error are inserted in the last Class.]

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## No. 16.

### 20 Charles II. c. 4.—An Act for proceeding to Judgement on Writs of Error brought in the Exchequer.

No. 16. 20 Charles II. c. 4.

16 Car. 2. c. 2.

31 Ed. 3. st. 1. c. 12.

'WHEREAS by a Statute made in the sixteenth Year of 'the King's most Excellent Majesty, it was enacted, 'That the not coming of the Lord Chancellor and Lord Treasurer, or either of them, at the Day of the Return of any 'Writ of Error to be sued forth by virtue of the Statute made 'in the one and thirtieth Year of the Reign of King *Edward* 'the Third, shall not cause any Abatement or Discontinuance 'of any such Writ of Error; but if both the Chief Justices of 'either Bench, or either of them, or any one of the said great 'Officers, the Lord Chancellor or Lord Treasurer, shall come 'to the Exchequer-Chamber, and there be present at the Day 'of the Return of any such Writ of Error, it shall be no

Abatement or Discontinuance, but the Suit shall proceed in Law to all Intents and Purposes, as if both the Lord Chancellor and Lord Treasurer had come and been present at the Day and Place of the Return of any such Writ; in which said Statute it is provided, That no Judgment shall be given in such Suit or Writ of Error, unless both the Lord Chancellor and Lord Treasurer be present thereat. And whereas at this present Time there is no Lord Treasurer, and therefore by reason of the said Proviso no Judgment can be had in any Writ or Writs of Error, brought and yet depending, or to be brought, to the great Charges and Prejudice of his Majesty's Subjects, and Delay of Justice;' For Remedy wherein, be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in Parliament assembled, That Judgment shall or may be given in any Suit, or Writ or Writs of Error now depending, or hereafter to be brought in the Exchequer, in the Presence of the Lord Keeper of the Great Seal of *England*, notwithstanding the Vacancy of a Lord Treasurer, in such Manner as hath been accustomed when there was present the said two great Officers; the said Proviso in the said Statute, or any thing else therein contained, to the contrary in any wise notwithstanding.

No. 16. 20 Charles II. c. 4.

Judgement may be given in Writs of Error in Presence of the Lord Keeper, notwithstanding the Absence of the Lord Treasurer.

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## No. 17.

10 and 11 William III. c. 14.—An Act for limiting certain Times, within which Writs of Error shall be brought for the reversing Fines, common Recoveries, and ancient Judgments.

'WHEREAS Fines and common Recoveries are the principal Assurances of Mens Estates, and Titles and Possessions depend thereon, and are protected and secured thereby, and by ancient Judgments, which nevertheless are reversible at any Time without Restraint or Limitation, for any Error or Defect which happens therein by the Ignorance or Carelessness of Clerks, and sometimes by unavoidable Accidents:' For the Remedy whereof, and for the quieting Mens Titles and Possessions under ancient Fines and Recoveries, and ancient Judgments, Be it enacted and ordained by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That no Fine or Common Recovery, nor any Judgment in any real or personal Action, shall, from and after the first Day of *May*, one thousand six hundred ninety-nine, be reversed or avoided, for any Error or Defect therein, unless the Writ of Error or Suit for the reversing such Fine, Recovery or Judgment, be commenced, or brought and prosecuted with

No. 17. 10 and 11 William III. c. 14.

No Fine or Recovery, &c. shall be reversed, unless Writ of Error be brought in 20 Years after Fine levied, &c.

No. 17.
10 and 11 William III. c. 14.

Effect, within twenty Years after such Fine levied, or such Recovery suffered, or Judgment signed or entered of Record.

Proviso.

II. Provided always, That if any Person who is or shall be intituled to any such Writ of Error as aforesaid, shall, at the Time of such Title accrued, be within the Age of twenty-one Years, or Covert, *Non compos Mentis*, imprisoned, or beyond the Seas, That then such Person, his or her Heirs, Executors, or Administrators, (notwithstanding the said twenty Years expired) shall and may bring his, her, or their Writ of Error, for the reversing any such Fine, Recovery or Judgment, as he, she or they might have done, in case this Act had not been made, so as the same be done within five Years after his or her full Age, Discoverture, coming of sound Mind, Enlargement out of Prison, or returning from beyond the Seas, or Death, but not afterwards, or otherwise.

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## No. 18.

5 George I. c. 13.—An Act for the Amendment of Writs of Error; and for the further preventing the Arresting or Reversing of Judgments after Verdict.

[Inserted ante. Class VI. No. 18.]

# PART IV. CLASS XIV.

## MISCELLANEOUS STATUTES RESPECTING CIVIL ACTIONS AND PROCEEDINGS.

### No. 1.

### 11 Henry VII. c. 12.—A Mean to help and speed poor Persons in their Suits.

'PRAYEN the Commons in this present Parliament assembled, That where the King our Sovereign Lord, of his most gracious Disposition, willeth and intendeth indifferent Justice to be had and ministered according to his common Laws, to all his poor Subjects as well to the poor as the rich, which poor Subjects be not of Ability ne Power to sue according to the Laws of this Land for the Redress of Injuries and Wrongs to them daily done, as well concerning their Persons and their Inheritance, as other Causes:' For Remedy whereof, in the Behalf of the poor Persons of this Land, not able to sue for their Remedy after the Course of the Common Law; be it ordained and enacted by your Highness, and by the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That every poor Person or Persons, which have, or hereafter shall have Cause of Action or Actions against any Person or Persons within this Realm, shall have, by the Discretion of the Chancellor of this Realm for the Time being, Writ or Writs Original, and Writs of *Subpæna*, according to the Nature of their Causes, therefore nothing paying to your Highness for the Seals of the same, nor to any Person for the writing of the same Writ and Writs to be hereafter sued; and that the said Chancellor for the Time being shall assign such of the Clerks which shall do and use the making and writing of the same Writs, to write the same ready to be sealed, and also learned Counsel and Attornies for the same, without any Reward taken therefore: And after the said Writ or Writs be returned, if it be afore the King in his Bench, the Justices there shall assign to the same poor Person or Persons, Counsel learned, by their Discretions, which shall give their Counsels, nothing taking for the same: And like-

No. 1. 11 Henry VII. c. 12.

No. 1.
11 Henry VII. c. 12.

wise the Justices shall appoint Attorney and Attornies for the same poor Person or Persons, and all other Officers requisite and necessary to be had for the Speed of the said Suits to be had and made, which shall do their Duties without any Reward for their Counsels, Help, and Business in the same: And the same Law and Order shall be observed and kept of all such Suits to be made afore the King's Justices of his Common Place, and Barons of his Exchequer, and all other Justices in the Courts of Record where any such Suit shall be.

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## No. 2.

## 1 Edward VI. c. 7.—The Continuation of Actions after the Death of any King.

No. 2.
1 Edward VI. c. 7.

The Death of the King shall not discontinue any Suit, &c.

'WHERE the King's Subjects heretofore have to their great 'Costs, Charges and Expences prosecuted and sued 'divers and sundry Actions, as well real and personal, as all 'other Actions mixt or otherwise, in the King's Majesty's 'Courts, and other Courts of Record, not only by Writs, but 'also by Plaint or Bills: which Actions, Suits, Bills and Plaints, 'by the Death or Demise of the Kings of this Realm have been 'discontinued; and the Parties in every such Actions, Suits, 'Bills and Plaints, thereby have been put without Day, where-'by the Demandants, Plaintiffs and Actors in every such Action 'and Suit, were compelled and driven by the Order of the 'Laws of this Realm, for their further Remedy, to commence 'and begin again his or their said Actions, Suits or Plaint, or 'else to prosecute and sue Resummons, Attachments, *Scire* '*facias*, or such other like Process, to revive his or their said 'Actions, Suits or Plaints; which was not only to their great 'Costs, Charges, Expences, Hindrances and Delay of their 'Causes and Suits, but also a great Let and Hindrance of Jus-'tice:' For Reformation whereof, be it ordained, established and enacted by the King our Sovereign Lord, and the Lords and Commons in this present Parliament assembled, and by the Authority of the same, That from thenceforth by the Death or Demise of the King's Majesty that now is, (whose Life Almighty GOD long preserve, keep and maintain in his most Royal Estate) nor by the Death or Demise of any that hereafter shall be King of this Realm, any Action, Suit, Bill or Plaint, now or that hereafter shall depend between Party and Party, in any of the Courts aforesaid, shall not in any wise be discontinued or put without Day: But that the Process, Pleas, Demurrers and Continuances in every Action, Actions, Suits, Bills or Plaints, which now or that hereafter shall depend, shall stand good and effectual, and be prosecuted and sued forth, in such Manner and Form, and in the same Estate, Condition and Order, as if the same King had lived or continued in full Life, the Death or Demise hereafter of any King of this Realm notwithstanding. And that all and all manner of judicial Process,

that hereafter shall be had or pursued in the Time of the Reign of any other King, then reigning at the Time of the Pursuit of the original or former Process, shall be made in the Name of the King that for the Time shall reign and be King of this Realm, and that Variance touching the same Process between the Names of the Kings shall not be in any wise material, as concerning any Default to be alledged or objected therefore.

No. 2. 1 Edward VI. c. 7.

The Variance between the original and judicial Process shall not be prejudicial.

II. And also be it further established and enacted by the Authority aforesaid, That all and every Assize of *Novel disseisin*, Assize of *Mortdancester*, *Juris utrim*, and Attaint, which at any Time hereafter shall be arraigned, commenced or sued before any of the King's Justices of Assize, shall not from henceforth be discontinued, or put without Day, by reason of Death, new Commission, Association or not coming of the same Justices of Assize, or any of them; but shall stand good and effectual in the Law, to all Intents, Constructions and Purposes; the Death, new Commission, Association or not coming of the same Justices, or any of them, in any wise notwithstanding.

Suits not discontinued by Death, new Commission, or Association, or not coming of Justices.

III. And over that, be it ordained and enacted by the Authority aforesaid, That albeit any Demandant or Plaintiff in any manner of Action, Bill or Suit shall fortune to be made or created Duke, Archbishop, Marquess, Earl, Viscount, Baron, Bishop, Knight, Justice of the one Bench or of the other, or Serjeant at the Law, depending the same Action, Bill or Suit, yet that notwithstanding, that no Writ, Action or Suit shall for such Cause in any wise be abatable or abated, but shall remain in like Force, Goodness and Strength as the same was before; any Law or Usage to the contrary in any wise notwithstanding.

Preferment of the Plaintiff to a Name of Dignity.

IV. And also be it ordained and enacted by the Authority aforesaid, That albeit any Person or Persons, being Justice of Assize, Justice of Gaol Delivery, or Justice of the Peace, within any of the King's Dominions, or being in any other of the King's Commissions whatsoever, shall fortune to be made or created Duke, Archbishop, Marquess, Earl, Viscount, Baron, Bishop, Knight, Justice of the one Bench or of the other, Serjeant at Law or Sheriff, yet that notwithstanding, he and they shall remain Justice and Commissioner, and have full Power and Authority to execute the same, in like Manner and Form as he or they might or ought to have done before the same.

Preferment of a Justice or Commissioner to a Name of Dignity.

V. And be it ordained and enacted by the Authority aforesaid, That in all Cases where any Person or Persons heretofore have been, or hereafter shall be, found guilty of any manner of Treason, Murder, Manslaughter, Rape, or other Felony whatsoever, for the which Judgment of Death should or may ensue, and shall be reprieved to Prison without Judgment at that Time given against him, her or them so found guilty, that those Persons that at any Time hereafter shall by the King's Letters Patents be assigned Justices to deliver

New Justices may give Judgment of a Prisoner found guilty of Felony and reprieved.

No. 2.
1 Edward VI. c. 7.

the Gaol where any such Person or Persons found guilty shall remain, shall have full Power and Authority to give Judgment of Death against such Person so found guilty and reprieved, as the same Justices (before whom such Person or Persons was or were found guilty) might have done, if their Commission of Gaol Delivery had remained and continued in full Force and Strength.

No Suit before Justices shall be discontinued by a new Commission.

VI. And over that, That no Manner of Process or Suit made, sued or had before any Justices of Assize, Gaol-delivery, *Oyer* and *Terminer*, Justices of Peace, or other of the King's Commissioners, shall ne in any wise be discontinued by the making and publishing of any new Commission or Association, or by altering of the Names of the Justices of Assize, Gaol-delivery, *Oyer* and *Terminer*, Justices of Peace, or other the King's Commissioners, but that the new Justices of Assize, Gaol-delivery and of the Peace, and other Commissioners, may proceed in every Behalf, as if the old Commissions and Justices and Commissioners had still remained and continued not altered.

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## No. 3.

29 Charles II. c. 5.—An Act for taking Affidavits in the Country, to be made use of in the Courts of King's Bench, Common Pleas, and Exchequer.

No. 3.
Charles II. c. 5.

'FOR the greater Ease and Benefit of all Persons whatsoever in the taking of Affidavits to be made use of 'and read in his Majesty's Courts of King's Bench, Common 'Pleas, and Exchequer at *Westminster*, as well in Matters and 'Things relating to his Majesty, and his Revenue, as in all 'other Matters and Causes whatsoever depending, or to be depending, in all or any of the Courts aforesaid, or any wise 'concerning the Proceedings of or in the same;'

Who may impower Persons by Commission to take Affidavits.

II. Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Chief Justice, and other the Justices of the said Court of King's Bench for the Time being, or any two of them, whereof the Chief Justice for the Time being to be one for the said Court of King's Bench; and the Chief Justice of the Common Pleas, and the Rest of the Justices there for the Time being, or any two of them, whereof the Chief Justice of the same Court to be one for the said Court of Common Pleas; and also the Lord Treasurer, Chancellor and Barons of the Court of Exchequer for the Time being, or any two or more of them, whereof the Lord Treasurer, Chancellor, or Lord Chief Baron for the Time being, to be one for the said Court of Exchequer; shall and may, by one or more Commission or Commissions under the several Seals of the said respective Courts, from Time to

Time as Need shall require, impower what and as many Persons as they shall think fit and necessary, in all and every the several Shires and Counties within the Kingdom of *England* and Dominion of *Wales*, and Town of *Berwick upon Tweed*, to take and receive all and every such Affidavit and Affidavits as any Person or Persons shall be willing and desirous to make before any of the Persons so empowered, in or concerning any Cause, Matter, or Thing depending, or hereafter to be depending, or any wise concerning any of the Proceedings to be in the said respective Courts, as Masters of Chancery in extraordinary do use to do; and that it shall and may be lawful for any Judge of Assize in his Circuit to take and receive any Affidavit or Affidavits as any Person or Persons shall be willing and desirous to make before him, in or concerning any Cause, Matter, or Thing depending, or hereafter to be depending, or in any wise concerning any Proceedings to be had in the said Courts of King's Bench, Common Pleas, and Exchequer, or any of them; which said Affidavits, taken as aforesaid, shall be filed in their several and respective Offices of the said Courts the same do concern, and then be read and made use of in the said Courts to all Intents and Purposes, as other Affidavits taken in the said Courts now are, and that all and every Affidavit and Affidavits, taken as aforesaid, shall be of the same Force as Affidavits taken in the said respective Courts now are; and all and every Person and Persons forswearing him, her or themselves in such Affidavit or Affidavits shall incur and be iable unto the same Penalties, as if such Affidavit or Affidavits had been made and taken in open Court.

No. 3. 29 Charles II. c. 5.

Judges of Assize in their Circuits may take Affidavits concerning Matters depending in the King's Bench, Common Pleas, and Exchequer.

The Penalty on such as forswear themselves in such Affidavits.

III. Provided, That for the taking of every such Affidavit, the Person or Persons so impowered and taking the same, shall for so doing receive only the Sum or Fee of Twelvepence, and no more, besides the Duty payable to his Majesty for the same; which said Duty to his Majesty shall not be paid to the said Commissioner, but to the proper Officers in the said respective Courts, before such Affidavit or Affidavits be therein filed or made use of.

The Person taking the same shall receive but 12d. besides the King's Duty.

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## No. 4.

## 9 and 10 William III. c. 15.—An Act for determining Differences by Arbitration.

No. 4. 9 and 10 Wm. III. c. 15.

'WHEREAS it hath been found by Experience, that 'References made by Rule of Court have contributed 'much to the Ease of the Subject, in the determining of 'Controversies, because the Parties become thereby obliged 'to submit to the Award of the Arbitrators, under the Penal'ty of Imprisonment for their Contempt in case they refuse 'Submission;' (1.) Now for promoting Trade, and rendring the

(1.) Before the Statute, " when the Submission to Arbitration was by Rule of Court, which was often the Case, the Conduct of the Arbitrators

No. 4.
9 and 10 Wm. III. c. 15.

Awards of Arbitrators the more effectual in all Cases, for the final Determination of Controversies referred to them by Merchants and Traders, or others, concerning Matters of Account or Trade, or other Matters; be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by Authority of the same, That from and after the eleventh Day of *May*, which shall be in the Year of our Lord One thousand six hundred ninety-eight, it shall and may be lawful for all Merchants and Traders, and others desiring to end any Controversy, Suit or Quarrel, Controversies, Suits or Quarrels, (2.) for which there is no other Remedy but by personal Action or Suit in Equity, by Arbitration, to agree that their Submission (3.) of their Suit to the Award or Umpirage of any Person or Persons should be made a Rule of any of His Majesty's Courts of Record, which the Parties shall choose, and to insert (4.) such their Agreement in their Submission, or the Condition of the Bond or Promise, whereby they oblige themselves respectively to submit to the Award or Umpirage of any Person or Persons, (5.) which Agreement being so made and inserted in their Submission or Promise, or Condition of their respective Bonds, shall or may, upon producing an Affidavit thereof made by the Witnesses thereunto, or any one of them, in the Court of which the same is agreed to be made a Rule, and reading and filing the said Affidavit in Court, be

Merchants and Traders, &c., desiring to end Controversies by Arbitration, may agree their Submission of the Suit to the Award of any Person, &c.

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and of the Parties to the Submission might, as it still may be, examined into, and if on Examination it appeared that the Arbitrators had been partial and unjust, or had mistaken the Law, the Court would not enforce a Performance of the Award; 1 Salk. 71, pl. 4; Anon. ibid. 73, Morris *v.* Reynolds, and Davila *v.* Almanza; ibid. 83, Forster *v.* Brunetti; 1 Mod. 21, Darbyshire *v.* Cannon; 2 Bur. 701, Lucas *v.* Wilson. If, however, the Conduct of the Arbitrators was not or could not be successfully impeached, the Court of K. B., in the Reign of Charles the Second, when Kelynge was Chief Justice, began to compel a Performance of the Award, by Attachment, as for a Contempt of a Rule of Court; 1 Salk. 83, Forster *v.* Brunetti; Sid. 54, Stiles *v.* Triste. It afterwards became a common Practice to issue out an Attachment for Nonperformance of an Award; and it was found by Experience, as the Preamble of the Statute recites, that the Enforcing of the Performance of Awards by Attachment had contributed much to the Ease of the Subject."—Wms.'s Note to 1 Saund. 327.

(2.) In Lucas *v.* Wilson, 2 Bur. 702, it was held by the Court of B. R. that a Submission is entered into by Rule of the Court in a Cause there depending, was not within the Statute; but that it stood upon the Common Law, independent of the Act; which was made to put Submission to Arbitration in Cases where there was no Cause depending, upon the same Foot as those where there was a Cause depending. But here was a Case depending at the Time of the Submission, and therefore the Case was not within the Provision of the Act; Pedley *v.* Westmacott, 3 E. 603.

(3.) A Case is within the Act, although the Agreement be to make the Award instead of the Submission a Rule of Court; Soilleux *v.* Herbst, 2 B. and P. 444; ——— *v.* Mills, 17 Vesey, 419.

(4.) A Submission by Parol is not within the Act; Ansell *v.* Evans, 7 T. R. 1.

(5.) Where the Bond contains an Agreement that the Submission shall be made a Rule of Court, and the Parties by Indorsement agree that the Time for making the Award shall be enlarged; this includes all the Terms of the original Submission, and consequently the Agreement for making it a Rule of Court; Evans *v.* Thomson, 5 E. 189.

entred of Record in such Court, and a Rule shall thereupon be (6.) made by the said Court, that the Parties shall submit to, and finally be concluded by the Arbitration or Umpirage which shall be made concerning them by the Arbitrators or Umpire, pursuant to such Submission; and in case of Disobedience to such Arbitration or Umpirage, the Party neglecting or refusing to perform and execute the same, or any Part thereof, shall be subject to all the Penalties of contemning a Rule of Court, (7.) when he is a Suitor or Defendant in such Court, and the Court on Motion shall issue Process accordingly, which Process shall not be stopped or delayed in its Execution, by any Order, Rule, Command or Process of any other Court, either of Law or Equity, unless it shall be made appear on Oath to such Court (8.) that the Arbitrators or Umpire misbehaved themselves, and that such Award, Arbitration or Umpirage was procured by Corruption, or other undue Means.

No. 4. 9 and 10 Wm. III. c. 15.

In Case of Disobedience, Party neglecting subject to Penalty, &c.

(6.) It is competent for either Party to revoke, by Deed, his Submission, at any Time before it is actually made a Rule of Court; Milne *v.* Gratrix, 7 E. 608. The Doctrine, that Submissions to Awards shall be subject to Revocation, either expressly or by Death, Marriage, or other Contingency, however firmly established, seems to have originated in a false Principle, by which they are considered as a mere Authority, instead of being regarded as an obligatory Contract. It is agreed, that the Obligation of a Bond is not destroyed by such Revocation, which, as long as the Penalty was literally enforced, was an adequate Security against such Revocation; but since the Determinations that upon these Bonds it is requisite to assign Breaches under Stat. 8 and 9 Wm. III. c. 11. sec. 8. the Remedy is in such Cases much less efficacious. Where a Feme sole submitted to Arbitration by Deed, and an Award was made after her Marriage, and an Action brought against the Husband and Wife for Non-performance, it was objected in Arrest of Judgment, that the Marriage was a Revocation; but it was held that such Marriage, although a Revocation, was itself a Breach of the Covenant to refer, in Respect of which the Action might be maintained, and therefore, that upon the whole Declaration it appeared that the Plaintiff had a good Cause of Action; Charnley *v.* Winstanley, 1 E. 266.

(7.) No Attachment can be granted for not paying a Sum of Money pursuant to an Award, without a personal Demand, although the Time and Place of Payment are directed by the Award; Brandon *v.* Brandon, 1 B. and P. 394. The Court of C. P. refused to grant an Attachment for Non-performance of an Award pending an Action brought on the Award, or to allow the Plaintiff to wave the Action in order to apply for an Attachment; Badley *v.* Lonsday, 1 B. and P. 81.

(8.) In Nicholas *v.* Chalie, 14 Vesey, 265, Lord Eldon intimated the Inclination of his Opinion that no Bill in Equity could be sustained for an Injunction against proceeding by Attachment upon an Award under the Statute, and in Gwinett *v.* Bannister, id. 530, expressly decided that the Statute does prohibit the Jurisdiction of a Court of Equity. In ——— *v.* Mills, 17 Vesey, the Question was agitated, whether the Jurisdiction of Courts of Equity is taken away in case the Bill is filed previously to the Submission being made a Rule of Court? but the Case was determined upon collateral Grounds. In Lord Lonsdale *v.* Littledale, 2 Vesey jun. 451, a Bill in Equity was sustained where the Award was made by a Rule of Court in a Cause pending, and which of course was not a Case within the Statute; and by Lord Eldon in Nicholas *v.* Chalie—"It does not appear even that there was the Term imposed upon the Party not to file a Bill in Equity; the Effect of which has never been determined in a Court of Equity; but that Case does not afford even that Ground of Objection, and is therefore no more than a Rule of Nisi Prius, by Consent given in Court, under an Order of Court, to abide an Award. All the subsequent Proceedings are nothing more than Part of the Transaction in the Course of a Suit at Law." And upon mentioning the

No. 4.
9 and 10 Wm. III. c. 15.

Corrupt Arbitration void, and may be set aside, &c.

II. And be it further enacted by the Authority aforesaid, That any Arbitration or Umpirage procured by Corruption or undue Means, shall be judged and esteemed void and of none Effect, and accordingly be set aside by any Court of Law or Equity, so as Complaint of such Corruption or undue Practice be made in the Court where the Rule is made for Submission to such Arbitration or Umpirage, before the last Day of the next Term (9.) after such Arbitration or

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Case a second Time, his Lordship said — "It has appeared extraordinary to those who have sat here, that Courts of Law should permit Parties by Contract upon such a Reference to Arbitration, to deprive themselves of the Benefit which they might receive in Equity." I cannot, however, help thinking, that Courts of Law in such Cases proceed upon very adequate Grounds; the general Object of Submission to Arbitration being to avoid the Expense and Protraction of Litigation; and all equitable Relief being given in such Cases by the summary Interposition of the Authority of the Court of Law in which the Action is depending; and although such Agreement may not furnish in the Court of Equity a Defence, by way of Plea to the Jurisdiction, the resorting to such Court, contrary to the Agreement, and when there is a full Opportunity of obtaining Redress, if warranted by the Facts, in the original Tribunal, may be very justly regarded as a Contempt of the Court of Law, and punished accordingly.

(9.) The Limitation does not extend to Cases referred under Orders of Nisi Prius; Anderson *v.* Coxeter, 1 Str. 501; Synge *v.* Jervoise, 8 East, 466; although the Statute only mentions Corruption or undue Practice, the Application to set aside an Award within the Statute, upon any other Ground, must be made within the limited Time; as where the Application was on account of the Arbitrator not having had sufficient Materials; Zachary *v.* Shepherd, 2 T. R. 781. So where the Defect appeared on the Face of the Award; Lowndes *v.* Lowndes, 1 E. 276. In Holland *v.* Brookes, 6 T. R. 161, an Application for an Attachment for Non-performance of an Award was resisted on several Grounds not appearing on the Face of the Award, but stated by Affidavit, as that the Arbitrator had not made his Award within the Time prescribed, and that the Plaintiff had since the Submission become a married Woman: but the Court were of Opinion that the Party could not object to an Award for any Defect not apparent on the Award itself, in shewing Cause against a Motion for an Attachment, and that he must obtain a Rule for that Purpose within the Time limited by the Act.

This Point appears to have been rather hastily decided, and to require farther Consideration. The making of the Award within the limited Time is a Condition essentially attached to the Submission; and it would seem necessary that in an Application for an Attachment, the Compliance with such Condition should be distinctly shewn in Support of the Application, for after the Expiration of the Term, the Attempt to exercise the Power of the Arbitrator does not appear to be a Matter of collateral Objection, but a mere Nullity. So if the Award is made after the Submission is legally revoked, as in the Case of Marriage; and there certainly is nothing in the Language of the Act itself to give Effect to an Award, if not made according to the Contract and Submission of the Parties. At the Time of deciding this Case, it was not considered as settled that an Attachment might be objected to on account of the apparent Invalidity of the Award, which, in a subsequent Case so decided, was stated by Lord Kenyon to be one of the most important Questions that had occurred since he had had a Seat in the Court; Pedley *v.* Goddard, 7 T. R. 73.

In Lucas *v.* Wilson, 2 Bur. 702, Lord Mansfield said, that the Court will not enter at all into the Merits of the Matter referred to Arbitration, but only take into Consideration such legal Objections as appear upon the Face of the Award, and such Objections as go to the Conduct of the Arbitrators. But Lord Eldon, in Gwinett *v.* Bannister, 14 Vesey, 532, (evidently referring to this Observation) says that some general Dicta upon this Subject in Burrow are inaccurate. In Knox *v.* Symmonds, 1 Vesey junr. 369, (which arose upon a Reference of a Cause in the Court of Chancery,) Lord Thur-

Umpirage made and published to the Parties; any Thing in this Act contained to the contrary notwithstanding.

No. 4. 9 & 10 William III. c. 17.

low said "A Party to an Award cannot come to have it set aside upon the simple Ground of erroneous Judgment in the Arbitrator, for to his Judgment they refer their Disputes; and that would be a Ground of setting aside every Award. In order to induce the Court to interfere, there must be something more, as Corruption in the Arbitrator, or gross Mistake, either apparent upon the Face of the Award, or to be made out by Evidence: but in case of Mistake it ought to be made out to the Satisfaction of the Arbitrator, and the Party must convince him that his Judgment was influenced by that Mistake, and that if it had not happened he should have made a different Award." In Morgan *v.* Mather, 2 Vesey, jun. 15, (being also the Case of a Reference of a Cause depending in Chancery) the Court, with Reference to a Question of allowing compound Interest, refused to set aside the Award, as there might be Cases in which such Allowance would be proper. Wilson, L. C. said—"It would be a melancholy Thing, if, because we differed from the Arbitrators in Points of Fact, we should set aside Awards. The only Grounds for that are: first, that the Arbitrators have awarded what was out of their Power: secondly, Corruption; or that they have proceeded contrary to the Principles of natural Justice, though there is no Corruption; as, if without Reason they will not hear a Witness: thirdly, that they have proceeded upon mere Mistakes which they themselves admit. I am of Opinion that where any Thing is submitted to Arbitration, the Arbitrators cannot award contrary to Law, because that is beyond their Power; for the Parties intend to submit to them only the legal Consequences of their Transactions and Engagements."

In Ching *v.* Ching, 6 Vesey, 282, upon an Application to set aside an Award, upon the Allegation that the Arbitrators had made a wrong Decision upon a Question of Law, Lord Eldon said—"If a Question of Law is referred to an Arbitrator he must decide upon it, and though he decide wrong you cannot help it. In a Case before Lord Rosslyn, Mr. Mansfield and I endeavoured to open an Award on the Ground of Mistake of the Arbitrator, the Question referred being as to the vesting of a Legacy: but it was held we could not."

In Kent *v.* Elstob, 3 East, 18, (arising on a Reference at Nisi Prius) the Arbitrator with his Award delivered a Paper containing Reasons for his Opinion, which appeared to proceed upon a mistaken View of the Law, and the Award was set aside, as he meant to determine according to the Law, and had mistaken it; and that the Reasons assigned should be taken to be the same as if inserted in the Award. Ching *v.* Ching was cited; but Lawrence J. said—"The Case appeared to be only a short Note, and without knowing more of the Circumstances of it he could not form any Judgment upon the Opinion said to have been there delivered, whether they applied or not."

In the subsequent Case of Young *v.* Walter, 9 Vesey, 364, a Motion being made to prevent the Execution of an Award on Account of a Mistake by the Arbitrator, Lord Eldon said—"The Court of King's Bench have lately quarrelled with a Decision of Lord Rosslyn, followed by me upon this Point. I confess I think those Decisions right. If there is a Question of Law, and the Parties choose to refer that to the Decision of an Arbitrator instead of the Court, why may not he take all moral Considerations into his Judgment? If they refer to a Person to decide all Matters in Difference according to Law, and he means to decide according to Law, and mistakes, the Court will set that right. But if a distinct Question of Law and nothing else is referred, as there was in the Case before Lord Rosslyn, and the Parties choose to say they will not take the Decision of the Court, but will take whatever an Arbitrator shall say is the Law between them, why may they not so agree?"

In Chace *v.* Westmore, 13 East, 357, upon a Reference of Causes depending to a Gentleman at the Bar, who made his Award as well upon the Law as the Fact, it was moved to set aside the Award, on the Ground of a mistake in Point of Law; but though the Question of Law was raised on the Pleadings, it did not appear upon the Face of the Award, but was brought before the Court on Affidavit. Upon shewing Cause, Lord Ellenborough and the Rest of the Judges intimated great Doubt whether they ought to enter into the Merits of the Decision. His Lordship observed, that there was a great Difference in these

Cases in considering the Object of the Reference, and the Description of the Person to whom the Decision was confided by the Parties. In ordinary Cases, where Questions of Fact are referred to one who is supposed to be competent to deal with such Questions, though not with Questions of Law, and a Question of Law happens to arise, in which he disturbs the whole Justice of the Case, the Court would, I think, enter into the Enquiry, and correct what was erroneous in the Decision. But, when a doubtful Question of Law arises between Parties, it often happens that on that very Account they agree to refer the Matter to the Arbitrament of a Gentleman of the Profession, meaning to refer the Matter of Law to him, and to abide by his Determination of it. After hearing Counsel in support of the Rule, his Lordship said, "I fear it is impossible to lay down any general and certain Rule upon this Subject, in what Cases the Court will not suffer an Award to be opened: it must be subject to some Degree of Uncertainty, depending upon the Circumstances of each Case. But it is enough to say, that, in the present Case, where the Merits in Law and in Fact were referred to a Person competent to decide upon both, we will not open the Award, unless it could be shewn to be so notoriously against Justice, and his Duty as an Arbitrator, that we could infer Misconduct on his Part." The other Judges agreed; and Le Blanc J. added, "that where the Question of Law necessarily arises upon the Face of the Award, then the Court must take notice of it."

In the subsequent Case of Campbell *v.* Twemlow, in the Exchequer, 1 Price, 81, which arose on a Reference at Nisi Prius to the Editor of the present Work, a Motion was made to set aside the Award, on account of the Rejection of a Witness as incompetent. A great Part of the Discussion at the Bar related to the Question of Law upon the Point objected to; but the Court held that it was unnecessary for them to give any Opinion on that Question, which they treated as a doubtful one. Thomson C. B. said, "Every Thing both of Law and in Fact must, in this Instance, have been referred to the Arbitrator. He has adjudged the Case, and has decided on not calling this Witness. Certainly, there have been many Instances, where the Courts have refused to interfere, on the Ground of a Mistake by an Arbitrator in point of Law. The Case of Ching *v.* Ching goes precisely to that Point. Here, certainly, it was a Question of Law, whether the Witness was admissible or not. There have been other Cases where the Arbitrator has prayed the Aid of a Court, and stated the Grounds of his Doubts on the Face of the Award; and there, certainly, the Courts have interfered, and given an Opinion. In Ives *v.* Medcalfe, 1 Atk. 63, a material Document was shewn to one Arbitrator only, and the other swore, that if he had seen it he believed he should not have made such an Award. There, Lord Hardwicke held that the Award was unfairly obtained, and on that Ground decreed that it should be set aside; but he agreed to the general Rule, that the Arbitrators are Judges of the Parties' own choosing; and that, therefore, they cannot object to the Award as an unreasonable Judgment, or as a Judgment against Law."—The other Judges concurred in the Opinion that the Award was conclusive.

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In Cases of Partnership, and other Relations of a permanent Nature, it is usual to insert a Clause, that any Matters of Difference which may arise should be determined by Arbitration; and in one Case, Lord Kenyon, as Master of the Rolls, decided, that such an Agreement might be pleaded in bar to a Suit in Equity; Halfhide *v.* Fenning, 2 Brown, C. C. 336; but this is contradicted by the general Current of Authorities both previous and subsequent. See Mitchell *v.* Harris, 2 Vesey, jun. 129; 4 Bro. Ch. 311; Kill *v.* Hollister, 1 Wils. 129; Street *v.* Rigby, 6 Vesey, 815.

And in Tattersall *v.* Groote, 2 B. and P. 131, the Court of Common Pleas expressed a strong Opinion that no Action could be maintained for Breach of a Contract to submit to Arbitration, on the Ground of its being nugatory; and that it would be difficult to direct a Jury upon what Rule to proceed in assessing Damages. The Case was decided on other Grounds, but the Opinion in Question seems to be very open to further Examination; for, in general, if one Person covenants absolutely with another for the Performance of a given Act, an Action may be maintained for the Non-performance of such Act, without shewing any Interest in its being performed. The Damages would in most Cases be merely nominal; but it is easy to imagine a Case in which, upon the Subject in Question, large Damages might be made

out to the Satisfaction of a Jury; for Instance, if the Plaintiff should have obtained the Decision of a Court in his Favour, and should have been put to considerable extra Costs. But the Difficulty or Uncertainty of ascertaining the Amount of Damages can very seldom be admitted as a Bar to the Right of Action.

But in Waters *v.* Taylor, 15 Vesey, 10, (being the well-known Case of Dispute between the Proprietors of the Opera House) upon a Motion for a Receiver, the Lord Chancellor suggested the absolute Necessity that the Parties should go to Arbitration, and also took the Objection that the Court does not interfere for the Management of a joint Concern, except as incidental to the Object of the Suit, to wind up the Concern and divide the Profit. In the Course of his Judgment he made the following Observations : — "This is compared to the familiar Case of a Partnership. There is no Instance of an Application for the Purpose of putting a Manager or Receiver upon Partnership Property, where the Court did not pause, from Regard to the Interest of the Parties; putting it to them to consider whether they would, by a proper Attention to their own Interests, remove the Necessity of doing that, which, though it must be done when necessary, is at best a ruinous Proceeding." — "If that is the usual Practice upon Partnerships in London, when the Parties have not provided that no such Measure shall be adopted, without entering into the Consideration how far those Parties have conclusively provided another Remedy, such an Intimation from the Court is peculiarly wholesome if the Parties have, upon the Face of the Instrument, demonstrated their Conviction that a Court of Justice should not be hastily resorted to: especially if the Nature of the Subject is such that a Judge, feeling himself bound to determine, must acknowledge that he cannot understand it; and the Instruments which must decide upon the Rights of the Parties betray their Consciousness that no Judge could understand it." — "The Argument with reference to those Provisions (the Provisions of the particular Deed) is, that the Court can no more renounce the Jurisdiction on account of the ridiculous or frivolous Nature of the Dispute, than upon the most important Point: but my Argument is, that the Forum they have provided for themselves, and the Guard introduced by them against the Forum of the Country, (whether effectually I do not say) shew their Intention against the Interference of any other Jurisdiction, until they have tried the Effect of the special Means, provided by themselves; and that Course which is familiar in the common Case of Partnership is more especially to be adopted where the Parties have themselves expressed that Intention." — "As a general Proposition, it is true that an Agreement to refer Disputes to Arbitration will not bind the Parties even to submit to Arbitration before they come into Court. I would not, therefore, say, that the Consequence of this Provision in the Instrument is, that a Suit cannot be instituted without adding this Qualification; that the Court, if bound to administer Relief, is fully justified in pausing before it takes, upon an interlocutory Motion, a step that is in Truth the greatest Part of the Relief." — "I am so strongly pressed by the Consideration that, whatever View the Parties themselves may take of the Subject, they are calling down upon them an Interposition, perhaps not the most ruinous, but that cannot take place without infinite Mischief to all who may have any Interest in the Subject, that I shall give them an Opportunity to pause, and consider whether they will press for my Determination, or have their Disputes determined by that more wholesome Mode which they have themselves provided; and I recollect very few Instances where this Sort of Recommendation has been given in vain." — "Whatever may be the Law of this Court as to the Capacity of Parties, by Stipulation, to deprive themselves of the Right to resort to a Court of Justice in the first Instance, and taking the Law to be, that a Man cannot bind himself to forbear to come here, until an Arbitration has been had; in almost every Line of this Deed, upon which the Suit is instituted, the Parties have expressed the greatest Anxiety to keep out of Court, if they could in any Manner arrange their Disputes by Arbitration. Accordingly I thought it within the Scope of my Discretion to give the Recommendation that has been given in almost every Case where it was proposed to make this Court the Manager of joint Concerns, giving the Parties an Opportunity of preserving themselves from the Ruin that must be the necessary Consequence of an active Interference of the Court." — "In the Instance of a Partnership, if the Parties cannot agree, each excluding the

other, that state of Circumstances, operating as a Dissolution, puts an End to the Partnership; and this Court then interposes in this Way, that it will wind up the Concern, and, with that View, will appoint a Person to collect and manage until an End can actually be put to the Concern. So a Manager of a West India Estate is appointed, not for the Purpose of carrying it on, but to enable the Court to give Relief when the Cause shall be heard."—"The Parties have still the *Locus Penitentiæ*, and if they will not settle their own Interests, it is immaterial whether the Consequences shall be produced by their own Act or by mine."

In Carlen *v.* Drury, 1 V. and B. 154, being an Application for the Appointment of a Receiver, in a Suit respecting a Subscription Brewery, Lord Eldon said —"This Court is not to be required on every Occasion to take the Management of every Play-house and Brew-house in the Kingdom; but if the Case justifies the Interference of the Court, it may appoint a Manager in the Interim for the Purpose of winding up the Concern."

And in Forman *v.* Homfray, 2 V. and B. 329, on a Bill by one Partner against another, for an Account, Lord Eldon said, he did not recollect an Instance of a Bill filed by one Partner against the other praying an Account merely, and not a Dissolution, proceeding on the Foundation that the Partnership was to continue. Sir Samuel Romilly admitted that it would be extremely difficult to produce any Authority, but said he had a strong Impression that he had drawn such Bills, observing that the Continuance of the Partnership is the Ground of the Jurisdiction in Equity, as if the Partnership was determined, either Party might proceed at Law to have the Account taken before Auditors. The Lord Chancellor observed the Inconvenience, that if a Partner can come in Equity for an Account merely, pending the Partnership, there seemed to be Nothing to prevent his coming annually. And the marginal Abstract of the Case is, "No Relief upon a Bill by one Partner against another not praying a Dissolution."

I have thought it eligible to bring together the preceding Citations, as indicating a State of the Law with Reference to a very important Subject, which seems to stand very much in Need of legislative Interference. A general Agreement to submit to Arbitration the Disputes which may arise between Parties forming a permanent Connection, is held to be destitute of legal Obligation. The Resort to a Court of Justice to settle Differences which can only be adequately adjusted by Reference or Accommodation, is contemplated as necessarily fraught with Ruin. A salutary Caution is indeed held out to Parties acting with Fairness and Integrity; but a most powerful Engine of Oppression is placed in the Hands of those who are actuated by improper Motives; and the Law, which in general derives its Efficacy and Advantage from the Power to compel, is reduced to assume the Language of Recommendation—a Language which has its due Effect upon professional Advisers, but which a fraudulent Party is authorized to contemn. A Connection is entered into upon mutual Engagements for its Continuance and upon the Duration of which, according to the fair Spirit and Intention of its original Formation, the Prosperity and Ruin of a Party may depend; but that Party is disabled from asserting his legal Rights with Reference to such Continuance, and can only have the Aid of the Law as connected with the Object of its Dissolution. The inconvenient Extent to which the Adoption of an opposite Course would engross the Time and Attention of those entrusted with the Administration of Justice, is manifest and apparent; therefore the Rights and Obligations, which in almost every other System of Jurisprudence are a most peculiar Object of Attention, must be left to the mere Support of personal Confidence and Integrity. The Existence and Magnitude of the Evil thus stated are manifest and indisputable. I am not prepared to suggest any particular Remedy, by the Institution and Establishment of any summary Mode of Jurisdiction; although I have often contemplated the general Principle of such an Establishment as being calculated, with proper Modifications, to produce a beneficial Effect: and I apprehend that there would be considerable Advantage, without any material Difficulty, in giving Effect to those positive Stipulations, which are familiar in their Occurrence, and almost essentially necessary in their Application.

The most important Object of Regulation would be, to supply by public Authority the Refusal to nominate an Arbitrator, and to obviate those Contrivances which might render an apparent and colourable Nomination nuga-

tory, with respect to the producing a due Decision of the Controversies intended to be submitted to Enquiry. I shall not extend this Digression by pursuing the Subject into its Detail: I am, from personal Observation and Experience, well aware of the Difficulties that have resulted from the Interference of the Legislature in establishing a compulsory System of Arbitration between Masters and Servants, in certain Branches of Manufacture; but I am far from thinking that the Difficulties attached to the Nature of the Subject are so insuperable, as necessarily to render the Suggestion of the Principle a Matter of fruitless and visionary Speculation.

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## No. 5.

## 6 Anne, c. 31.—An Act for the better preventing Mischiefs that may happen by Fire.

P.

No. 5. 6 Anne, c. 31. No Action to be prosecuted against any Person in whose House, &c. any Fire accidentally begins, &c.

VI. AND be it further enacted by the Authority aforesaid, That no Action, Suit, or Process whatsoever, shall be had, maintained, or prosecuted against any Person in whose House or Chamber any Fire shall, from and after the said first Day of *May*, accidentally begin, or any Recompence be made by such Person for any Damage suffered or occasioned thereby; any Law, Usage, or Custom to the contrary notwithstanding: And if any Action shall be brought for any Thing done in pursuance of this Act, the Defendant may plead the General Issue, and give this Act in Evidence; and in case the Plaintiff become nonsuit, or discontinue his Action or Suit, or if a Verdict pass against him, the Defendant shall recover Treble Costs.

# PART IV. CLASS XV.

## WALES, COUNTIES PALATINE, AND LIBERTIES.*

* It has been thought desirable to introduce in this Class some of the old Statutes respecting Wales, as indicating the State of that Country, and the Nature of its Connexion with England, although such Statutes are not immediately applicable to the present general Division.

Mr. Abbott, the present Speaker of the House of Commons, published a Work on the Practice of the Chester Circuit, (of which he was formerly a Member) preceded by a very valuable Preface, in which, in Addition to his Remarks on the particular Subject, he makes some very valuable Observations on the general Propriety of admitting Alterations in the existing Law.

The Editor of this Work has published an Account of the Practice of the Court of Common Pleas at Lancaster, which was formerly submitted to the Prothonotary of the Court, and may be therefore regarded as authentic.

### No. 1.

### 3 Edward I. (West. 1.) c. 17 —The Remedy if the Distress be impounded in a Castle or Fortress.†

† At the Close of the Chapter is the following Enactment:—"And this is to be intended in all Places where the King's Writ lieth. And if that be done in the Marches of Wales, or in any other Place, where the King's Writ be not current, the King, which is Sovereign Lord over all, shall do Right there unto such as will complain."

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### No. 2.

### Statutum Wallie.—*Claus.* 12 Edw. I. *dorso. in Turr. Lond.*

No. 2. 12 Edward I.

EDWARDUS Dei gratia, rex Anglie, dominus Hybernie, & Dux Acquitannie, omnibus fidelibus suis de terra sua Snaudon. & de aliis terris suis in Wallia, salutem in Domino. Divina providentia que in sui dispositione non fallitur, inter alia dispensationis sue munera, quibus nos & regnum nostrum Anglie decorare dignata est, terram Wallie cum Incolis suis prius nobis jure feodali subjectam, jam sui gratia in proprietatis nostre dominium, obstaculis quibuscunque cessantibus, totaliter & cum integritate convertit, & corone regni predicti tanquam partem corporis ejusdem annexuit & univit. Nos itaque natu divino volentes predictam terram nostram Snaudon. et

*Ex Rot. in Turr.* Lond.

alias terras nostras in partibus illis, sicut & ceteras ditioni nostre subjectas, ad honorem et laudem Dei & Ecclesie sancte, ac zelum justicie sub debito regimine gubernari, & Incolas seu Habitatores terrarum illarum, qui alto & basso se submiserunt voluntati nostre, & quos sic ad nostram recipimus voluntatem, certis legibus & consuetudinibus sub tranquillitate & pace nostra tractari, leges & consuetudines partium illarum hactenus usitatas coram nobis & proceribus regni nostri fecimus recitari, quibus diligenter auditis, & plenius intellectis, quasdam ipsarum de concilio procerum predictorum delevimus quasdam permisimus, & quasdam correximus, & etiam quasdam alias adiciendas & statuendas decrevimus, & eas de cetero in terris nostris in partibus illis perpetua firmitate teneri & observari volumus in forma subscripta. No. 2. 12 Edward I.

Providimus & decernendo statuimus, quod Justiciar. Snaudon. habeat custodiam & gubernationes pacis nostre regie in Snaudon. & terris nostris Wallie adjacentibus, & Justiciam exhibeat quibuscunque juxta Brevia regia originalia, leges etiam & consuetudines infrascriptas.

Volumus etiam & statuimus, quod Vicecomites, Coronatores, & Ballivi Commotorum sint in Snaudon. & terris nostris partium earundem.

Vicecõmes de Angleseia, sub quo tota terra Anglesey, cum Cantredis, Metis & Bundis suis.

Vicecomes de Karenarvan, sub quo Cantreda de Arvan, Cantreda de Arthlencoyth, Commotum de Cruthin, Cantreda de Thleen, & Commotum de Yvionith.

Vicecomes de Meyronnith, sub quo Cantreda de Meironnith, Commotum de Ardudo, & Commotum de Penthlin, & Commotum de Dereynon, cum Metis & Bundis suis.

Vicecomes de Flynt, sub quo Cantreda de Englefeud, terra de Meylor Seysnek, & terra de Hope, & tota terra conjuncta castro nostro & ville de Rothelan usque ad villam Cestrie, de cetero intendat sub nobis Justiciario nostro Cestrie, & de exitibus ejusdem Commoti [*al.* eorundem Comitatuum. *Tot. et al.*] respondeat ad Scaccarium nostrum Cestrie.

Coronatores sint in eisdem Comitatibus per Breve Regium eligendi, cujus tenor invenietur inter originalia Brevia Cancellarie.

Sint etiam Ballivi Commotorum, qui officia sua fideliter faciant & exequantur, & eisdem diligenter intendant secundum quod per Justic. & Vicecom. eis injungetur. Vicecomes de Keyrmarthin cum Cantredis & Commotis, ac Metis & Bundis suis antiquis. Vicecomes de Kardigan & Lampader, cum Cantredis, Commotis, ac Metis & Bundis suis.

Coronatores sint in eisdem Comitatibus, & Ballivi Commotorum ut prius.

*De Officio Vicecomitis in Wallia, et modo Commot. tenendorum.*

Vicecomes officium suum exercere debet sub hac forma, scilicet, Cum quis sibi conquestus fuerit de quaqunque transgres-

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No. 2.
12 Edward I.

sione sibi facta contra pacem domini regis, sive de captione & injusta detentione averiorum, sive de namio vetite, aut de debito, vel alio contractu non observato, & comsimilibus, per Breve vel sine Brevi, primo capiat plegios de prosequendo clameum suum, vel per fidem si fuerit pauper, & postea faciat executionem, prout plenius declaratur, hoc modo. Defendentes in quolibet casu summoneantur quod sint ad proximum Comitatum responsuri conquirentibus. Ad quem Comitatum, facta summonitione & testificata, si non venerint, per considerationem Comitatus iterum summoneantur quod sint ad alium proximum Comitatum responsuri, ut prius: Ad quem si non venerint, itera summonitione & testificata, per considerationem Comitatus tertio summoneantur quod sint ad proximum tertium Comitatum responsuri, ut prius: Ad quem Comitatum si non venerint, extunc conquirentes per considerationem Comitatus tam in placitis per Brevia quam querimoniis sine Brevi recuperunt petitiones suas cum dampnis sive emendis, tam in rebus mobilibus quam immobilibus, prout Actiones requirunt, & pro hujusmodi defaltis pena secundum legem & consuetudinem Wallensicam domino regi incurratur. Et cum partes comparuerint ad placitandum, utraque narrando suam veritatem sine occasione admittatur, & secundum petitiones, responsiones, & allegata hinc inde, per considerationem Comitatus ad judicium pro querente vel defendente procedatur, & secundum qualitatem & quantitatem delicti puniantur.

Et sciendum quod hoc modo debet Comitatus teneri, scilicet, de mense in mensem, in loco ubi dominus rex ordinaverit, & hoc per diem Lune in uno Com. per diem Martis in alio Com. per diem Mercurii in tertio Com. & per diem Jovis in quarto Com. & non per alios dies. Et Vicecomes ad Comitatem suum tenendum sic procedat.

In primis audiat & recipiat coram eo & coronatoribus & sectatoribus Com. presentationes feloniarum & casuum qui contigerint duos Comitatus de morte hominis hoc modo; quod quatuor Villate propinquiores loco ubi casus homicidii vel infortunii contigerit, veniant ad proximum Comitatum una cum Inventore & Walescheria, id est, parentela hominis interfecti, & ibi presentent factum felonie, casum infortunii, & modum utriusque, ita pronuntiando, quod tali die & tali loco contigit quod talis notus aut ignotus inventus fuit occisus per feloniam, vel submersus, vel alio modo mortuus per infortunium, & talis eum invenit qui presens est, &c. Et ista presentatio tam in Rotulo Coronatorum quam in Rotulo Vicecomitis statim inrotuletur. Et si ibi fuerit homo vel femina qui appellum sequi voluerit, statim recipiantur plegii de prosequendo, & deducatur appellum in Comitatu illo, ita quod si appellati comparuerint, statim capiantur, & in prisona Domini Regis usque adventum Justiciarii detineantur, & salvo custodiantur, Et si non comparuerint, tunc ad prosecutionem appellantis exigantur de Comitatu in Comitatum. Et si ad quartum Comitatum non venerint, vel manucapti non fuerint, utlagentur, & femine

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weyvientur. Et ad primum Comitatum, ad quem exigentur, si non comparuerint, statim eorum terre & catalla capiantur & seisiantur in manum Domini Regis, & tradentur custodienda villatis, ut infra. No. 2. 12 Edward I.

Eodem modo precedatur in appello de plaga, mahemio, raptu, incendio, & roberia contra appellatos, si non comparuerint. Et si comparuerint, & plegios invenerint sufficientes, sex ad minus vel plures, standi recto in adventu Justiciarii, statim replegientur.

Et sciendum [est *Tot.*] quod contra appellatos de vi, precepto, missione, vel receptamento, non est procedendum ad utlagariam quousque de facto aliquis convincatur.

Vicecomes faciet Turnum suum in singulis Commotis suis bis in anno in aliquo certo loco ad hoc assignando, scilicet, semel post Festum Sancti Michaelis, & semel post Pascha, ad quem Turnum omnes libere tenentes, & alii terram tenentes & in Commoto illo residentes, tempore summonitionis Turni tenendi, exceptis religiosis, clericis, & feminis, ibidem venire debent. Et Vicecomes per Sacramentum duodecim libere tenentium de discretioribus & legalioribus, vel plurium, pro discretione Vicecomitis, diligenter inquirat de capitulis coronam Domini Regis, tangentibus subscriptis. De Seductoribus Domini Regis & Regni, Domine Regine & Liberorum suorum, & eorum consentaneis. De furibus, de homicidis, de roboratoribus, de murdritoribus, de incendiariis incendia feloniter facientibus, & eorum receptatoribus, & eis consentientibus. De macellariis carnes furatas scienter vendentibus, & ementibus. De whittanwariis, scilicet qui coria bovina & equina furata scienter albificant, ut sic non agnoscantur. De redobatoribus pannorum furatorum, eos in novam formam redigentibus, & veterem mutantibus, ut de mantello tunicam vel supertunicam facientibus, & similia. De utlagatis, & illis qui regnum abjuraverunt reversis. De hiis qui contra adventum & iter Justicirii se subtraxerunt, & post iter Justiciarii redierunt. De raptoribus virginum sanctimonialium & matronarum honeste viventium. De thesauro invento. De cursu atque diverso. De via obstructa, vel restricta, vel arctata. De muris, domibus, portis, fossatis, & marleriis levatis & factis juxta iter publicum, ad nocumentum ipsius itineris, & in periculum transeuntium, & de predicta levantibus & facientibus. De falsariis monete & sigilli Domini Regis. De malefactoribus in parcis & vivariis. De frangentibus prisonam Domini Regis. De capientibus columbas volentes de columbariis. De facientibus *Puntbreche*, hoc est [de *Tot. et al.*] fractoribus parcorum, in quibus animalia imparcantur. De Forstallis, hoc est, de rescussu averiorum. De *Hamesokne*, hoc est, de ivasione domus. De *Thefbote*, hoc est, de emenda furti capta sine consideratione curie Domini Regis. De imprisonantibus liberos quoscunque. De Usurariis. De amoventibus vel corrumpentibus divisas. De Assisa panis & cervise non observata, & [de, *Tot.*] eam infringentibus. De bussellis, galonibus, & aliis mensuris in-

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12 No. 2. Edward I. justis [& per ea vendentibus, *Tot.*] De ulnis & ponderibus injustis, & per ea vendentibus. De hospitantibus ignotos ultra duas noctes. De sanguine effuso. De hutesio levato. De tondentibus multones noctanter in ovilibus, & eos excorianti-bus, vel etiam alia animalia. De capientibus & colligentibus noctantur blada in autumno, & ea asportantibus; & de omnibus aliis hujusmodi malefactoribus. Inquiratur etiam de juribus Domino Regi subtractis, ut de custodiis, wardis, maritagiis, releviis, feodis, advocationibus ecclesiarum, sique fuerint, sectis Comitatuum et Commotorum, quis ea subtraxerit, et a quo tempore. Et de hiis qui sibi appropriaverint jura regalia sine warranto, ut furcas, emendas assise panis et cervisie fracte, placitum de namio vetito, et alia hujusmodi jura que specialiter et per prerogativam pertinent ad curiam Domini Regis.

Vicecomes autem in visu & in turno suo faciendo statim in principio convenire faciat coram se omnes totius Commoti, & eos jurare faciat, quod verum presentabunt duodecim juratoribus vel pluribus per Vicecomitem electis, & nullum verum celabunt, vel aliquod falsum dicent de hiis de quibus ab eis inquiretur ex parte Domini Regis, & facto Sacramento exponantur eis capitula suprascripta, injungatur eis, quod de singulis veritatem diligenter inquirant; & siquos invenerint, qui ob eorum maleficium vitam amittere debeant vel membra, eorum nomina in secretis Vicecomiti intiment, ne forte hujusmodi indictati, si presentes essent in Turno, aufugerent, si in publico indictarentur. De ceteris autem capitulis bene poterunt palam & publice respondere, & veredictum suum reddere, & tunc dicatur eis quod singuli seorsum vadant, & diligenter tractent, & inquirant de hiis que eis sunt injuncta; & cum bene certiorari fuerint, redeant, & veredictum suum reddant & presentent.

Vicecomes vero in veredictis & recognitionibus admittendis non querat occasiones versus presentantes, nec capiat ab eis fines per sic quod non occasionentur. Recepto autem veredicto seu presentatione presentantium, Vicecomes statim, vel quam cito poterit, indictatos de maleficiis, quorum pena est mors vel amissio membrorum, capiat, & in prisona detineat, vel per plegios sufficientes dimittat. Et de ceteris capitulis, secundum quod inquisierit, statim fiat correctio & debita executio in omnibus & singulis supradictis.

Ballivi autem Commotorum de cetero teneant Commotos suos, & justitiam facient & exerceant inter litigantes.

*De officio Coronatoris, videlicet, de Placitis Corone [in partibus Tot.] Wallie.*

Provisum est, quod in quolibet Commoto Wallie sit unus Coronator ad minus, qui per Breve Domini Regis in forma inter cetera Brevia regia in Rotulo sequenti contenta, in pleno Com. eligatur, & coram Vicecomite ibidem faciat Sacramentum, quod erit fidelis Domino Regi, & quod fideliter faciat et exequetur omnia que ad officium Coronatoris pertinent. Eritque

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Officium ejus, quod statim postquam ad aliquo requisitus fuerit veniendi ad videndum mortuum intersectum per teloniam vel submersum, aut quocumque alio modo mortuum per infortunium, & etiam ad videndum hominem enormiter vulneratum, de cujus vita desperata; quod statum mandabit Vicecomiti vel Ballivo Commoti, quod venire faciat coram eo certis die & loco omnes duodecim annorum & ultra, de villa illa in qua casus contigerit, & de quatuor villatis propinquioribus, & quod per eorum Sacramentum fideliter, caute & secrete, ac diligenter inquiret de felonia, de felonibus, & eorum catallis, similiter de facto, et de modo facti, videlicet, quis fuerit culpabilis de facto, quis de vi, & cujusmodi vi, quis de precepto seu missione, quis etiam de receptamento post factum, & de catallis eorundem hominum qui per inquisitionem inde culpabiles inventi fuerint. Inquirat etiam quis interfectum primo invenerit, & nomen ejus inrotuletur, & attachietur per plegios, quorum nomina inrotulentur veniendi ad proximum Commotum, & etiam coram Justiciario in adventu suo. Et quod facta inquisitione illa, eam statim distincte et aperte inrotulari faciet una cum nominibus eorundem qui inventi fuerint culpabiles, & eorum catallis, & quod nomina eorundem scripta Vicecomiti, si presens fuerit, vel Ballivo Commoti secrete liberabit, precipiendo ex parte Domini Regis, quod corpora eorum statim capiantur, et in prisona Domini Regis salvo custodiantur donec inde fecerint rectum in curia Domini Regis; et quod catalla eorundem fideliter appreciari faciet, et tam catalla particulariter, quam precium eorundem in Rotulo suo ponet, et eadem catalla per visum Vicecomitis vel Ballivi et aliorum fidelium Domini Regis, qui interfuerint singulis villatis, in quibus catalla predicta inventa fuerint, integre liberari faciet, ut in adventu Justiciarii Domino Regi fideliter inde respondeant.

No. 2. 12 Edward I.

Coronator vero, cum fecerit inquisitionem super mortuum, interroget Walescheriam, scilicet, parentelam interfecti; & siquis ex parte patris, & alius ex parte matris apparuerint, dicendo quod sunt de parentela sua, & hoc per fideles Regis testificatum fuerit, nomina eorum in Rotulo suo statim inrotulari faciat: Si autem nullus de parentela compareat, inrotulet similiter quod nullus comparet, ut Justiciarius in adventu suo evidentius facere possit quid in hac parte fuerit faciendum.

Coronator etiam diligenter inquirat casum infortunii & modum, & secundum quod invenerit per inquisitionem, distincte inrotulari faciat. Inquirat etiam de inventore, & nomen ejus inrotulari faciat, ut supra.

Preterea cum latro, vel homicida, seu alius malefactor, fugerit ad Ecclesiam, Coronator quam cito sibi constiterit, mandet Ballivo Domini Regis illius Commoti, quod certo die venire faciat coram eo probos et legales homines de visneto, et in presentia eorum facta recognitione Felonie, fieri faciat Abjurationem hoc modo; quod felo ducatur usque ad portam Ecclesie et assignetur ei portus Coronatorum, et extunc abjuret

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No. 2. regnum, et secundum quod assignabitur ei portus propinquus
12 Edward I. vel remotus, prefigatur ei terminus exeundi regnum predictum, ita quod in eundo versus portum illum deferens quandum crucem in manu sua, non declinet a via regali aliquo modo, scilicet a dextris nec a sinistris, set semper eam teneat quousque regum exierit.

FORME Brevium Regiorum originalium placitandorum in Wallia.

*Breve de nova disseisina de libero tenemento, de quo quis liber homo injuste et sine judicio fuerit disseisitus.*

Rex Vicecomiti Angleseye salutem. Questus est nobis A quod B et C injuste et sine judicio diss. eum de libero tenemento suo in N post pacem nostram in Wallia proclamatam Anno Regni nostri undecimo. Et ideo tibi precipimus, quod si predictus A fecerit te securum de clameo suo prosequendo tunc facias tenementum illud reseisiri de catallis, que in ipso capta fuerunt, et ipsum tenementum cum catallis esse in pace usque ad certum diem quem Justiciarius noster tibi scire faciet. Et interim facias duodecim liberos et legales homines de visneto illo videre tenementum illud, et nomina eorum imbreviari, et sum. eos per bonos summonitores, quod tunc sint coram prefato Justiciario nostro parati inde facere recognitionem. Et pone per vadios et salvos plegios predictos B et C vel Ballivos suos si ipsi inventi non fuerint, quod tunc sint ibi audituri illum recognitionem. Et habeas ibi sum. nomina plegiorum et hoc Breve. a Dat. apud Karenarvan, tali anno et tali die, vel alibi.

*De nova disseisina de communia pasture* [*fiat Breve* Tot.] *sic:*

Questus est nobis A quod B et C injuste, &c. disseis. eum de communia pasture sua in N que pertinet ad liberum tenementum suum in eadem villa (vel in alia, si casus hoc velit) post pacem nostram, &c. Et ideo tibi precipimus, quod si predictus A fecerit te securum, &c. tunc facias duodecim liberos, &c. videre pasturam illam et tenementum, et nomina eorum imbreviari, et summoneas eos per bonos Summonitores quod [tunc *Tot.*] sint coram prefato Justiciario, &c. parati inde facere recognitionem. Et pone per vad. et salvos plegios predictos B et C vel Ballivos suos, si ipsi inventi non fuerint, quod tunc sint ibi audiend. illam recognitionem. Et habeat ibi, &c. Dat. &c.

*Vel sic:*

Questus est nobis A quod B injuste, &c. levavit vel prostravit quandam sepem vel quoddam fossatum, vel obstruxit, vel arctavit quandam viam; vel divertit cursum cujusdam aque; vel levavit, vel prostravit, vel exaltavit, quoddam stagnum in N ad nocumentum liberi tenementi sui in eadem villa (vel in alia, si casus sit) post pacem, &c. Et ideo tibi precipimus, quod si predictus A fecerit te securum, &c. tunc facias duodecim, &c. videre sepem illam, vel fossatum illud, vel viam illam,

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vel cursum illius aque, vel stagnum illud, et tenementum, et nomina eorum imbreviari, et summone eos, &c. quod sint coram Justiciario nostro, &c. parati, &c. Et pone per vadios, &c. predictum B vel Ballivum, &c. quod tunc sit, &c. Et habeas, &c. Dat. &c. 12 Edward I.

Et mutentur forme Brevium secundum deversitates casuum.

*Breve de morte Antecessoris.*

Rex Vicecomiti salutem. Si A fecerit te securum de clameo suo prosequendo, tunc summoneas per bonos Summonitores duodecim liberos et legales homines de visneto de N quod sint coram Justiciario nostro parati Sacramento recognoscere, si B pater predicti A fuit seisitus in dominico suo ut de feodo de manerio tali cum pertin. vel de tanto terre cum pertin. in N die quo obiit post pacem nostram in Wallia proclamatam Anno Regni nostri undecimo, et si idem A propinquior heres ejus sit, et interim manerium illud, vel terram illam videant, et nomina eorum imbreviari facias. Et summoneas per bonos Summonitores C qui manerium illud vel terram illam tenet, quod tunc sit ibi ad audiend. illam recognitionem. Et habeas ibi Sum. et hoc Breve. Dat. &c.

Et fiant Litere Patentes sub hiis verbis, quousque Dominus Rex aliud inde ordinaverit.

Rex Justiciario suo salutem. Sciatis quod constituimus vos Justiciarum nostrum, una cum hiis quos vobis duxeritis assoc. ad Assisas nove Disseisine, et mortis Antecessoris, in partibus Wallie capiendas: Et ideo vobis mandamus, quod ad certos dies et loca, quos ad hoc provideritis, Assisas illas capiatis, facturi inde quod ad Justiciam pertinet, secundum legem et consuetudinem Regni nostri, salvis nobis amerciamentis et aliis ad nos inde spectantibus. Mandavimus enim Vicecomitibus nostris, quod ad certos dies et loca, quos ad hoc eis scire facietis, Assisas illas coram vobis venire faciant. In cujus rei testimonium has Literas nostras vobis fecimus fieri Patentes. Dat. &c.

Et fiat Breve clausum ad mandatum Justiciarii dirigendum Vicecomitibus sub hac forma.

Rex Vicecomiti salutem. Precipimus tibi quod omnes Assisas nove Disseisine et mortis Antecessor. coram Justiciario nostro arraniatas per Brevia nostra venire facias coram eodem Justiciario certos dies et loca, quos tibi scire faciet, cum Brevibus originalibus, Attachiamentis, et omnibus aliis Adminiculis dictas Assisas tangentibus, et hoc Breve. Dat. &c.

Et mutetur forma Brevis secundum diversitates casuum, videlicet, si vel mater, vel frater, vel soror, vel avunculus, vel amita, fuit seisitus in dominico suo ut de feodo de re petita per viam mortis Antecessoris die quo obiit. Et quando plures coheredes et participes alicujus hereditatis petunt ipsam hereditatem, videlicet, quando unus ipsorum petit de morte patris, vel matris, fratris, vel sororis, avunculi, vel amite, et aliis vel alii ex ipsis coheredibus petunt de morte avi sui vel avie sue,

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No. 2.
12 Edward I.

vel consanguinei sui vel consanguinee sue, fiat eis Breve mortis Antecessoris in suo casu, quia illa pars dicti Brevis que tangit naturam mortis Antecessoris juxta articulum inde usitatum attrahit ad se naturam aliorum articulorum tangentium coheredes in gradibus remotioribus.

*Breve commune quod in aliquo casu tangit jus, et in aliquo possessionem.*

Rex Vicecomiti salutem. Precipe A quod juste et sine dilatione reddat B manerium de N cum pertin. quod predictus A ei deforciat, ut dicit; et nisi fecerit et predictus B fecerit te securum de clameo suo prosequendo, tunc summoneas per bonos Summonitores predictum A quod sit coram Justiciario nostro ostensurus quare non fecerit. Et habeas ibi Sum. et hoc Breve. Dat. &c.

*Vel sic:*

Precipe A quod juste, &c. reddat B tantum terre cum pertin. in N ut supra.

Et similiter concedatur istud Breve coram Justic. in Banco, si petens voluerit.

*Breve de dote in Wallia.*

Rex Vicecomiti salutem. Precipe A quod juste et sine dilatione reddat B que fuit uxor C rationabilem dotam suam, que eam contingit de libero tenemento, quod fuit predicti C quondam viri sui in N unde nichil habet, ut dicit, et unde queritur quod predictus A ei deforciat. Et nisi fecerit, et predicta B fecerit te securum de clameo suo prosequendo, tunc summoneas per bonos Summonitores [predictum, *Tot. at al.*] A quod sit quorum Justiciario nostro, &c. ostens. &c. Et habeas ibi Sum. et hoc Breve. Dat. &c.

Et mutetur forma Brevis secundum diversitatem casuum, videlicet, si mulier dotata fuerit ad hostium Ecclesie, de assensu et voluntate patris, vel alterius antecessoris cujus heres esse poterit vel esse debet.

*Breve de Debito.*

Rex Vicecomiti salutem. Precipe A quod juste et sine dilatione reddat B centum solidos, quos ei debet et injuste detinet, ut dicit. Et nisi fecerit, et predictus B fecerit te securum de clameo suo prosequendo, tunc summoneas per bonos Summonitores predictum A quod sit coram Justiciario nostro ostensurus quare non fecerit. Et habeas ibi Sum et hoc Breve. Dat. &c.

Et si catalla vel sacci lanarum exigantur, fiat eis Breve subscriptum.

Rex Vicecomiti salutem. Precipe A quod juste et sine dilatione reddat B unum saccum lane pretii decem marcarum, quem ei injuste detinet; vel catalla ad valentiam decem marcarum, que ei injuste detinet, ut dicit. Et nisi fecerit, &c. ut supra.

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Et fiant formule consimilium Brevium secundum ostensiones petentium et diversitatis casuum. Et non fiant hujusmodi Brevia de debito coram Justiciario placitanda de minori summa quam de quadraginta solidis; set placita de debito que summam quadraginta solidorum non attingunt, in Comitatu placitentur, et in Commotis similiter. Et si forte petens placitare voluerit de hujusmodi in Comitatu, tunc fiat ei tale Breve quod vocatur Justicies. No. 2. 12 Edward I.

Rex Vicecomiti salutem. Precipimus tibi quod justicies A quod juste et sine dilatione reddat B centum solidos, quos ei debet, ut dicit, sicut rationabiliter monstrare poterit quod ei reddere debet, ne amplius inde clam. audiamus pro defectu Justitie. Dat. &c.

*Vel sic:*

Quod reddat ei unum saccum lane precii decem marcarum, quem ei injuste detinet, vel catalla ad valenciam decem marcarum que ei injuste detinet, ut dicit, sicut rationabiliter monstrare poterit, nec amplius &c. Dat. &c.

Et fiat inde Pone, si petatur, sub hac forma.

Rex Vicecomiti salutem. Pone ad petitionem petentis coram Justiciario, &c. tali die loquelam que est in Comitatu tuo per Breve nostrum inter A et B de debito centum solidorum, quod idem A prefato B exigit. Et summoneas per bonos Summonitores predictum B quod tunc sit ibi prefato A inde responsurus. Et habeas ibi Sum et hoc Breve, et aliud Breve. Dat. &c.

*Breve de Conventione.*

Rex Vicecomiti salutem. Precipe A quod juste et sine dilatione teneat B conventionem inter eos factam de uno mesuagio [cum, *Tot.*] decem acris terre, et quinque acris bosci cum pertin. in N. Et nisi fecerit, &c. tunc summoneas predictum A quod sit, &c. ostensurus, &c. Dat. &c.

Et fiant Brevia de conventione secundum querimonias contrahentium et diversitates casuum, sive coram Justiciar. vel in Com. juxta petentium voluntatem. E si voluerint in Com. placitare, fiat eis Breve quod vocatur Justicies, et postmodum inde poterit fieri Pone, si petatur.

*Forma Brevis de Attornato.*

Rex Vicecomiti salutem. Scias quod A attornavit coram nobis B et C ad lucrandum vel perdendum in loquela que est in comitatu tuo per Breve nostrum inter ipsum A petentem et D tenentem de uno mesuagio cum pertin. in N. Et ideo tibi mandamus, quod predictos B et C vel alterum ipsorum, si ambo interesse non possunt, loco ipsius A ad hoc recipias. Dat. &c.

Et eodem modo fiant Brevia de attornatis in aliis casibus, secundum diversitatis casuum et formas Brevium.

*Ex Rot. in Turr.* Lond.

*Forma Brevis de Coronatore eligendo.*

No. 2. 12 Edward I. Rex Vicecomiti salutem. Precipimus tibi quod in pleno Com. tuo de assensu ejusdem Com. elegi facias unum Coronatorem, qui prestito Sacramento prout moris est, extunc faciat et conservet ea que ad officium Coronatoris pertinent in Com. predicto. Et talem eum eligi facias qui melius sciat et possit officio illi intendere. Et nomen ejus Nobis scire facias. Dat. &c.

Et si ipsi infirmetur vel moriatur, vel ob aliquam aliam causam Officio illi intendere nequiverit, tunc fiat aliud Breve mutatis mutandis.

Placitorum quedam habent terminari per Assisam, quedam per Juratas.

Per Assisam habent terminari, cum quis seisitus de libero tenemento postea per vim disseisitus petit seisinam sibi restitui: Et in hoc casu provisum est Breve de nova disseisina in forma inter alia Brevia originalia Cancellarie suprascripta. Similiter de communia pasture, cum quis disseisitus communia pasture sua pertinente ad liberum tenementum suum petit seisinam sibi restitui, et in hoc casu providetur idem Breve de nova disseisina, per mutationes quorundam verborum in forma inter alia Brevia originalia Cancellarie suprascripta, in quibus sic est procedendum.

Primo receptis a querente duobus Plegiis de prosequendo Vicecomes faciat eligere duodecim liberos et legales homines, &c. de visneto ubi tenementum vel pastura existit, et faciat eos videre tenementum, et similiter pasturam, et attachiet disseisitores, prout continetur in Brevi. Postea, cum partes et Assisa venerint coram Justiciario, queratur a querente, de quo libero tenemento, vel de qua communia pasture queritur se disseisiri, et secundum ejus querimonium et responsionem partis adverse procedatur ad captionem Assise, nisi disseisitor aliquid sciat dicere quare Assisa debeat remanere Et si Assisa faciat pro querente, recuperet querens Seisinam suam simul cum dampnis taxatis per Assisam versus disseisitorem, et disseisitor remaneat in misericordia Domini Regis, vel committatur gaole redimendus, si disseisina fracta fuerit enormiter et vi armata.

Sunt quedam alia Brevia que per Assisam habeat terminari, videlicet, de Stagno levato, prostrato, exaltato; de Fossato levato vel prostrato; Sepe levata vel prostrata; de Via obstructa vel arctata; de Cursu aque diverso: Et secundum diversitatem casuum diversificetur Breve originale, que quidem Brevia cum Brevibus de nova disseisima superius continentur; et eodem modo sicut supradictum est in Brevi de libero Tenemento et de Communia pasture est procedendum in eisdem.

In supradictis Brevibus Assise nove disseisine nullum jacet Essonium seu Dilatio, set prima die procedatur ad justitiam faciendam.

Aliud est Breve Assisarum quando aliquis petit Seisinam tenementi, unde Antecessor suus obiit seisitus, videlicet, Pater,

*Ex Rot. in Turr.* Lond.

Frater, Avunculus aut Avus; in quo casu provisum est Breve mortis Antecessoris in forma inter cetera Brevia in Rotulo predicto contenta. No. 2. 12 Edward I.

Contingit etiam aliquando quod petitur Sesina Antecessoris, in casu quando Antecessor non obiit seisitus, set fuit seisitus die quo habitum Religionis suscepit, vel iter perigrinationis arripuit, in quo itinere obiit: Et tunc loco illius clausule, die quo obiit, ponatur, die que habitum Religionis suscepit, vel iter peregrinationis, &c. in quo itinere, &c. Et si iter, &c. In isto Brevi Antecessoris sic est procedendum.

Primo inventis Plegiis de prosequendo, et electa Assisa, et visu facto a Juratoribus, summoneatur tenens per duos bonos et legales Summonitores quod sit coram Justiciario ad certum diem, &c. et contineat summonitio quindecim dies ad minus, ad quem diem si venerit, procedat Justiciarius in officio suo exequendo. Et si ad diem illum non venerit, puniatur pro defalta sua secundum quod continetur in Lege Wallensica, scilicet, per tres vaccas, vel per precium earundem, et resummoneatur per alios duos Summonitores, summonitione similiter continente spatium quindecim dierum, sicut predictum est, ad quem diem, sive venerit sive non, procedat Justiciarius ad officium suum faciendum, nisi fecerit se essoniari de ultra mare, et tunc dabitur ei spacium quadraginta dierum ut possit habere *Eb* et *Flod.* Set caveat sibi qui se sic essoniaverit, quod si existens inter quatuor maria de ultra mare falso se essoniaverit, et super hoc convincatur per bonam probationem vel per bonam Inquisitionem, puniatur tanquam pro defalta, primo per misericordiam quod continetur in Lege Wallensica, et precludatur ei via aliquid dicendi contra Assisam, nisi vocare possit ad Warrantum.

Et sciendum quod nec in Brevi mortis Antecessoris, nec in alio Brevi de placito terre, jacet aliquod essonium, nisi tantum essonium de ultra mare, et hoc antequam tenens vel deforciens apparet in Curia; et essonium de servitio Domini Regis, quod jacet in omni loco placiti, cum Rex illud warrantizare voluerit. Set caveat sibi quod falso non faciat se essoniari de servitio Domini Regis, quia si deficiat de Warranto Regis, puniatur pro defalta per misericordiam Domino Regi dandam secundum Legem Wallensicam, et versus partem adversam de expensis sibi refundendis illa jorneta secundum discretionem Justiciarii.

In istis Brevibus mortis Antecessor. sic est procedendum.

Lecto primo Brevi in quo continetur petitio Petentis, queratur a Deforciente, si quid sciat dicere quare Assisa debeat remanere; quod si nesciat, capiat Justiciarius Assisam per Juratores qui melius sciant veritatem secundum formam Brevis. Et si Assisa transeat pro Petente, adjudicetur Petenti seisina cum dampnis taxatis per Juratores, & Deforciens remaneat in misericordia Domini Regis.

Multa quidem potest Deforciens dicere contra Assisam; potest enim vocare ad Warrantum, et tunc exspectandus est adventus Warranti, quem Justiciarius faciat venire, primo per

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No. 2.
12 Edward I.

unam Summonitionem, et si necesse sit per Resummonitionem, sicut dictum est de principali Deforciente, et pro defalta puniatur sicut predictum est. Post Resummonitionem si nondum venerit, nec se essoniaverit, procedat Assisa versus eum per defaltam. Et si Assisa transeat pro Petente, adjudicetur Petenti Seisina rei petite, et Deforciens habeat de terra Warranti ad valentiam. Si vero Warrantus venerit, et petat sibi ostendi per quod debeat warrantizare, oportet quod Vocator ostendat cartam que faciat mentionem de Warrantia, vel de dono facto a Warranto vel Antecessore suo cujus heres ipse est, in quo fiat mentio quod de Feoffatore et ejus heredibus tenere debeat; vel quod ostendat quod Warrantus sit seisitus de homagio suo pro tenemeno petito, quod habet inquiri si dedicitur, per eos in quorum presentia dicet se fecisse homagium simul cum aliis liberis et legalibus hominibus juratis; vel quod teneat tenementum illud in excambium, pro alio tenemento. Si per ista poterit Deforciens ducere Warrantum suum ad warrantizandum remanebit in misericordia Regis quia dedixit, warrantizare, et nichilominus considerabitur quod warrantizet et repondeat ad Assisam si voluerit.

Multa alia potest Deforciens dicere contra Assisam, videlicet quod Antecessor de cujus morte, &c. commisit feloniam pro qua fuit suspensus, utlagatus, vel tanquam publicus latro fugiens et juri non patens decapitatus, vel si confitens feloniam coram Coronatore Walliam abjuravit.

Potest etiam Deforciens objicere Petenti Bastardiam, et tunc mandabitur Episcopi loci, quod rei veritatem super hoc inquirat, et certificet inde capitalem Justiciarium Wallie; et secundum quod Episcopus certificaverit, procedetur ad judicium sine captione Assise. Et si Episcopus mandet quod Bastardus est, precludatar ei via petendi: Et si mandet quod legitimus est, Justiciarius faciat venire Deforcientem per Summonitionem, et si necesse sit, per Resummonitionem, reservata Regi misericordia pro defalta ut sepe dictum est. Post Resummonitionem, sive venerit sive non, recuperabit Petens demandam suam per testimonium Episcopi, cujus testimonio non creditur in contrarium, et remanebit in misericordia Regis.

Multa alia potest dicere deforciens que difficile esset enumerare, sicut, Antecessor de cujus morte Assisa arrainiata est fuit villanus, & terram tenuit in villenagio, vel quod tenuit ad voluntatem, vel ad terminum vite, vel anorum; in quibus casibus Assisa mortis Antecessoris non jacet.

Non debent autem supradicte Assise nove disseisine et mortis Antecessoris capi, nisi in propriis Com. ne patria laboribus et expensis fatigetur; set per Justiciarium capiantur Assise bis, ter, vel quater in anno.

Dictum est in parte de Brevibus Assisarum, et de processu eorundem; modo dicendum est de Placitis que terminari habent per Inquisitiones seu per Juratas; quorum quedam sunt de rebus immobilibus, sicut de Tenementis; sive de mobilibus, sicut de debitis et catallis; quedam de utrisque; quedam de

*Ex Rot. in Turr.* Lond.

Transgressionibus. Set primo de Tenementis et Immobilibus aliquid est dicendum, de quibus provisum est Breve, cujus forma inter cetera Brevia partium illarum continetur. No. 2. 12 Edward I.

Processus istius Brevis est talis.

Primo inventis Plegiis de prosequendo, Vicecomes faciet summoneri per bonos Summonitores Tenentem quod sit ad certum diem, ad quem si non venerit, fiat alia summonitio ad alium diem: Et si ad secundum diem non venerit, summoneatur quod sit ad tertium diem, ad quem si non venerit, nec se essoniari fecerit, adjudicabitur petenti seisina per defaltam, et Deforciens remanebit in misericordia Regis, reservata nichilominus misericordia Regi pro qualibet defalta, ut predictum est.

Cum vero Deforciens comparuerit, quia per verba Brevis non potest sciri petitio Petentis, eo quod multe et quasi infinite sunt rationes petendi, necesse habet ille qui petit, quod narret versus Deforcientem, et exprimat rationem petitionis sue, et hoc per verba veritatem continentia, sine calumpnia verborum, non observata illa dura consuetudine, Qui cadit a syllaba, cadit a tota causa.

De rationibus petendi, quales sint et esse debeant, expedit quod aliquid sub brevitate dicatur.

Multotiens habet Petens jus per hoc, qnod Antecessor suus tenuit terram petitam, et fuit inde seisitus ut de jure et de feodo, et tunc necesse habet Petens narrare descensum parentele descendendo ad ipsum. Contingit etiam quod aliquis dimittit terram [suam *Tot. et al.*] ad terminum vite vel annorum, post quem terminum ad ipsum vel ad heredes suos terra debet reverti; vel etiam debet ad ipsum reverti post mortem mulieris tenentis in dote, vel tanquam eschaeta post mortem tenentis sui Bastardi, qui alium non potest habere heredem nisi de corpore suo legitime procreatum; vel post mortem tenentis sui Felonis: In quatuor casibus predictis, vel post mortem alicujus, debet terra remanere alii per formam donationis. In hiis casibus et similibus exprimat Petens petitionem suam secundum casum suum, et in casibus illis et consimilibus quibus utendum est Brevi predicto, illo et non alio utatur, et audita ratione Petentis, habeat Tenens visum terre, si petat, et detur dies intra quem fiat visus. Et ad diem datum post visum respondeat Deforciens, qui vocare poterit ad Warrantum per auxilium Curie, sicut dictum est in Brevi mortis Antecessoris. Et Justiciarius faciat venire Warrantum sicut venire fecit principalem per unam Summonitionem, et si necesse sit, per secundam et tertiam, ad quem si non venerit, puniatur tamen pro qualibet defalta, ut predictum est, et adjudicabitur Petenti seisina rei petite per defaltam Warranti, et Deforciens habeat de terra Warranti ad valentiam, et Warrantus sit in misericordia. Si Warrantus venerit, et gratis warrantizaverit, recipietur ad responsionem et placiti defensionem sine visu terre habendo. Si autem warrantizare dedixerit, deducatur placitum de Warrantia inter eos secundum quod dictum est supra in Brevi [mortis

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No. 2. *Tot. et al.*] Antecessoris. Si autem Deforciens excipiat contra
12 Edward I. petentem, quod Antecessor suus cujus seisinam petit, vel aliquis in descendendo, fuerit Bastardus, ita quod ab ipso vel per modum ipsius nichil potest ei descendere, audiatur; vel ostendat cartam Antecessoris sui de Feoffamento, vel alicujus in descendendo de quieta clamantia; et per unius partis affirmationem et alterius negationem descendant partes ad legalem Inquisitionem, et per veredictum Inquisitionis terminetur placitum; quia placita de terris in partibus istis non habent terminari per Duellum, neque per magnam Assisam. Eodem modo, si excipiat quod Antecessor vel aliquis in descendendo commisit Feloniam, per quod sibi non competit actio; in quo casu si ille cui hoc opponitur neget, potius habet negotium terminari per Recordum Justiciarii, vel Inquisitionem patrie de suspensione, et etiam per Recordum Coronatorum de utlagaria abjuratione. Similiter in petitione Tenementi quod debet reverti post terminum preteritum, vel per modum donationis, per affirmationem unius partis et per negationem alterius descendatur ad Inquisitionem patrie, et per veredictum ejus judicetur.

De alio Articulo, scilicet, de mobilibus, debitis sive catallis, est dicendum, super quo pro visum est Breve de debito in forma prescripta.

In hoc Brevi sic est procedendum.

Primo inventis plegiis de prosequendo, summoneatur debitor sive reus quod sit coram Justiciario ad certum diem, ad quem si non venerit, iterum summoneatur, et si ad secundum diem non venerit, nec se essoniaverit, adjudicetur Petenti debitum per defaltam, simul cum dampnis per discretionem Justiciarii, vel per Inquisitionem patrie, pro voluntate Justiciarii, et debitor remaneat in misericordia Regis, reservata Regi semper misericordia pro qualibet defalta. Si vero Debitor venerit, necesse habet Actor exprimere petitionem, et rationem sue petitionis, videlicet, quod tenetur ei in centum marcis, quas sibi accommodavit, cujus solutionis, dies preteriit, vel pro terra, vel pro equo, aliis rebus seu catallis quibuscunque sibi venditis, vel pro arreragiis, redditus non provenientis de tenementis, vel de aliis contractibus, super quibus necesse habet producere sectam vel cartam obligationis, vel talliam ostendere. Audita et intellecta petitione et etiam ratione Petentis, respondeat Debitor, qui si debitum recognoscat, adjudicetur et levetur de terris et catallis, &c. Si neget debitum, et proferatur contra eum obligatio sua, oportet scriptum verificari per testes nominatos in obligatione, si sint superstites, simul cum patria. Et si non sint testes nominati, vel si fuerint mortui, verificetur solummodo per patriam, et secundum veredictum patrie procedatur ad judicium. Si vero querens non habeat obligationem, set tantummodo producat sectam vel talliam, poterit pars adversa defendere [*al.* ostendere, *Tot. et al.*] se ei in nullo teneri, et hoc defendere per legem, scilicet per proprium Sacramentum cum undecim secum jurantibus, vel per patriam, prout eligere voluerit.

*Ex Rot. in Turr.* Lond.

Contingit aliquando quod debitor confitetur quod aliquando debuit ei debitum, et allegat solutionem; tunc oportet ostendere acquietantiam de solutione, vel poterit Petens defendere per legem se nichil recipisse, vel etiam per patriam, &c. No. 2. 12 Edward I.

Istud Breve de debito non concedatur de minori summa quam quadraginta solidis, quia de minori debito placitant in Comitatu sine Brevi et per Breve.

De tertio articulo in quo provisum est Breve de conventione, per quod petuntur aliquando mobilia, aliquanda immobilia, per vim conventionis inite inter partes, que legi derogat, in forma in loco prenotato conscripta.

Processus istius Brevis talis est.

Inventis primo Plegiis de prosequendo, summonebitur Reus semel, et si necesse sit, secundo; et si ad secundam summonitionem non venerit, nec se essoniaverit, audiatur petitio et ratio Petentis, et capiatur res petita, si sit tenementum, in manum Regis; et si fuerit catallum, illud vel ejus valor capiatur in manum Regis, et detur alius dies; et si infra quindecim dies replegiaverit rem sic in manum Regis captam, et ad diem sibi datam venerit, admittatur ad responsionem et defensionem Sin autem, adjudicetur Petenti sua petitio per defaltam, simul cum dampnis taxatis, sicut supra dicitur in Brevi de debito, et remaneat in misericordia Regis, salva semper Regi misericordia pro defalta, ut predicitur. Audita querimonia Querentis, et ratione sue petitionis, respondeat Defendens, et per affirmationem unius partis & negationem alterius procedi poterit ad Inquisitionem, et per Inquisitionem patrie poterit negotium terminari.

Et sciendum est, quod per Breve de conventione aliquando petitur liberum tenementum, ut in casu quando aliquis dimittit terram alteri reddendo inde quandam certam firmam, apposita conditione in Scripto conventionis quod nisi ei fuerit satisfactum de firma, liceat ei terràm quam dimisit ingredi et tenere. Si ille cui terra fuerit dimissa, non satisfecerit de firma; et ille qui dimisit, non habeat potestatem secundum tenorem scripti sui ingrediendi terram quam dimisit propter potentiam sui Adversarii; in hoc casu per Breve de conventione recuperare debet tenementum simul cum dampnis.

Aliquando cum conveniat inter aliquos quod unus feoffabit alium de aliquo tenemento, et ad certum diem ei seisinam faciet, si postmodum transtulerit illud tenementum in tertiam personam ipsam feoffando, cum non poterit illud feoffamentum per priorem contractum ad effectum non perductum infirmari, non poterit in isto casu cui fit injuria, per Breve de conventione subveniri, nisi in hoc tantum ut satisfiat ei de dampnis in pecunia. Et sic in casu competit actio petendi tenementum per Breve de conventione, et in casu pecuniam seu dampna sine tenemento.

Et quia infinita sunt contractus conventionum, difficile esset facere mentionem de quolibet in speciali, set secundum naturam cujuslibet conventionis per affirmationem unius partis et

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No. 2. 12 Edward I.

negationem alterius, aut pervenietur ad Inquisitionem facendam super facto negotii, aut pervenietur ad cognitionem Scriptorum in judicio prolatorum, et secundum illam cognitionem erit judicandum; aut negabuntur Scripta, et tunc pervenietur ad inquirendum de confectione Scriptorum per testes in Scriptis nominatos, si fuerint simul cum patria; quod si testes non fuerint nominati, vel etiam mortui, tunc solummodo per patriam.

De quarto Articulo, videlicet, de Transgressionibus personalibus, de quibus provisum est quod omnes Transgressiones, unde dampna non excedunt quadraginta solidos, placitentur coram Vicecomite in Comitatu sine Brevi per Vadios et Plegios: Transgressiones que excedunt summam quadraginta solidorum, placitentur coram Justiciario Wallie sub hac forma.

Quod antiquam Justiciarius eum audiat, juret Querens quod actio sua excedat summam [*al.* valorem, *Tot. et al.*] quadraginta solidorum, et hoc facto, et Plegiis inventis de prosequendo, precipitat Justiciarius Vicecomiti vel Ballivo loci, quod in brevi termino faciat venire coram eo eum de quo fit querimonia, et audita querimonia Actoris, respondeat Reus; et cum vix in placito transgressionis evadere poterit Reus quin defendat se per patriam, de consensu partium inquirat veritatem Justiciarius per bonam patriam, et inquisita veritate, si invenerit Reum culpabilem, castiget eum per Prisonam vel per Redemptionem, vel per Misericordiam, et per Dampna Leso restituenda, secundum qualitatem et quantitatem delicti, ita quod castigatio illa sit aliis in exemplum, et timorem prebeat delinquendi. Et quia dictum est supra de consensu partium, contingere poterit quod Reus refutabit Inquisitionem patrie: in quo casu si Actor tansgressionem sibi factam offerat verificare per patriam, et Reus patriam refutaverit, habeatur pro convicto, et puniatur sicut si convictus esset per patriam.

Et quia Mulieres non extiterant dotate hactenus in Wallia Rex concedit quod dotentur. Duplex est dos mulieris: Una est assignatio tertie partis totius terre que fuit viri sui in vita sua, super quo fiat Breve de rationabili dote alibi in suo loco cum ceteris Brevibus Wall. expressum.

Processus istius Brevis est talis.

Inventis Plegiis de prosequendo, summoneatur Deforciens quod sit ad certum diem, ad quem si non venerit, iterum summoneatur, ad quem diem si non venerit, adjudicetur mulieri dos sua, scilicet tertia pars, &c. simul cum dampnis, &c. Si vero Defendens venerit, admittatur ad responsionem sine visu terre habendo, et formata petitione mulieris, dicatur Tenenti quod respondeat si sciat aliquid dicere quare ipsa dotem habere non debeat: qui si nichil sciat dicere, recuperet mulier ut supra.

Si forte objiciat quod non debeat dotem habere, eo quod nunquam fuit tali quem ipsa vocat virum legitimo matrimonio copulata; tunc mandabitur Episcopo, quod super hoc inquirat veritatem, et inquisita veritate, certificet Justiciario Wallie, et secundum certificationem Episcopi procedatur ad judicium in hac forma.

*Ex Rot. in Turr.* Lond.

Si Episcopus certificet quod non fuit uxor legitima, preclusa erit ei v' habendi dotem: Si certificet quod fuit uxor legitima, summoneatur Tenens quod sit ad certum diem auditurus judicium suum, ad quem diem si non venerit, iterum summoneatur quod sit ad alium diem, ad quem diem sive venerit sive non, nullo essonio allocato, recuperabit Mulier dotem suam et dampna, et Tenens in misericordia, salva Regi semper misericordia pro defaltis.

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12 Edward I.

Si vero objiciat quod non debeat dotem habere, eo quod vir suus die quo eam desponsavit, nec unquam postea tenuit tenementum unde petit dotem in feodo, ita ut eam inde dotare potuit, hujus rei veritas per patriam solummodo est inquirenda, et per veredictum patrie ad judicium erit procedendum.

Si objiciatur ei quod non debet dotem habere, eo quod vir suus commisit feloniam, tunc si constiterit de felonia, dotem non recuperabit.

Similiter si objiciatur ei quod vir suus amisit terram de qua petit dotem per judicium, ut illam in quam jus non habuit; hoc convicto per recordum Justiciariorum si dedicatur coram quibus terra illa fuit amissa, vel per patriam si in Comitatu vel minori Curia fuit amissa, preclusa erit sibi vita de dote habenda.

Alia dos est quando filius dotat uxorem suam de voluntate patris sui, forma cujus Brevis inter cetera invenietur, cujus processus talis est.

Summoneatur Deforciens sicut in alio Brevi de dote, et eodem modo puniatur contumacia sicut in alio Brevi de dote. Si vero ad diem sibi datum venerit, tunc formata petitione Mulieris, respondeat, et si dedicatur dotatio facta in dicta forma, et consensus dotationis, et convinci poterit per patriam, quod vir dotavit eam ad hostium Ecclesie de tenemento patris sui, et quod pater personaliter vel per specialem nuncium ad hoc missum consensit illi dotationi, recuperabit Mulier dotem et dampna.

Sciendum est etiam quod in utroque Brevi potest Tenens vocare ad warrantum per auxilium Curie, et procedetur in placito warrantie sicut predictum est.

Set est differentia in casu isto de Dote et in casu superius per Precipe, ubi terminatur modus procedendi in warrantia, quia ibi in illo casu Petens semper recuperat rem petitam, et Tenens de terra warranti ad valentiam. In casu de Dote alio modo est quod Tenens tenebit in pace, et mulier habebit de terra warranti ad valentiam Dotis petite, dum tamen Tenens habeat de terra viri sui ad valenciam, unde hoc fieri possit, alias vero non.

De modo Dotis aliter assignande nichil ad presens.

Quia aliter usitatum est in Wallia quam in Anglia quoad successionem hereditatis, eo quod hereditas partibilis est inter heredes masculos, et a tempore cujus non extitit memoria partibilis extitit, Dominus Rex non vult quod consuetudo illa abrogetur, set quod hereditates remaneant partibiles inter consimiles heredes, sicut esse consueverunt, et fiat partitio heredi-

*Ex Rot. in Turr.* Lond.

No. 2. 12 Edward I. tatis illius sicut fieri consuevit, hoc excepto, quod Bastardi non habeant de cetero hereditates, et etiam quod non habeant decetero propartes cum legitimis nec sine legitimis.

Et si forte hereditas aliqua extunc pro defectu heredis masculi descendat ad legitimas Mulieres heredes ultimi Antecessoris sui inde seisiti, volumus de gratia nostra speciali quod eedem Mulieres legitime habeant propartes suas inde sibi in Curia nostra assignandas, licet hoc sit contra consuetudinem Wallensicam antea usitatam.

Et quia Wallenses Nobis supplicarunt, ut eis concedamus, quod de rebus suis immobilibus, veluti de terris et tenementis, inquiratur veritas per bonos et legales homines de visneto de consensu partium electos; et de mobilibus, sicut de contractibus, debitis, fidejussionibus, conventionibus, transgressionibus, catallis, et omnibus aliis hujusmodi mobilibus, uti possint Lege Wallensica, qua uti consueverunt, que talis erat, Quod si aliquis conqueretur de alio de contractibus vel factis in tali loco, quod posset intentio Querentis probari per videntes et audientes; cum Querens per hujusmodi testes, quorum testimonium reprobari non possit, probaverit intentionem suam, recuperaret rem petitam, et condempnaretur pars adversa: Et in aliis que non possent probari per videntes et audientes, esset pars defendens ad purgationem suam, aliquando cum pluribus, aliquando cum paucioribus, secundum qualitatem et quantitatem rei vel facti; et in furto, si furtum inveniatur in manu, se purgare non posset, set pro convictu haberetur:

Nos pro communi pace et quiete predicti Populi nostri Terre nostre Wallie Premissa eis concedimus: Ita tamen quod ea in furtis, latrociniis, incendiis, murdris, homicidiis, et roberiis manifestis et notoriis locum non habeant, nec ad ea aliquatenus se extendant: in quibus volumus quod utantur Legibus Anglie, prout superius est expressum.

Et ideo vobis mandamus, quod Premissa de cetero in omnibus firmiter observetis. Ita tamen quod quotienscunque et quandocunque et ubicunque Nobis placuerit, possimus predicta Statuta et eorum partes singulas declarare, interpretari, addere, sive diminuere, pro nostre libito voluntatis, et prout securitati nostre et Terre nostre predicte viderimus expedire.

In cujus rei testimonium Presentibus Sigillum nostrum est appensum. Dat. apud Rothelanum die Dominica in medio Quadragesime, Anno Regni nostri Duodecimo.

## No. 3.

28 Edward III. c. 2. — Lords of the Marches of *Wales* shall be attendant to the Crown of *England*, and not to the Principality of *Wales*.

*Ex Rot. in Turr.* Lond.

ITEM acorde est et establi qe touz les Seignurs de la Marches de Gales soient perpetuelement entendantz et annexes a la corone d'Engleterre come ils et leur auncestres ount este de tout temps avant ces heures et noun pas a la Principalte de Gales en qi mains qe meisme la Principalte soit ou devendra apres ses heures.

'ITEM it is accorded and 'established, That all the 'Lords of the Marches of '*Wales* shall be perpetually at'tending and annexed to the 'Crown of *England*, as they 'and their Ancestors have been 'all Times past, and not to the 'Principality of *Wales*, in 'whose Hands soever the same 'Principality be, or hereafter 'shall come.'

No. 3. 28 Edward III. c. 2.

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## No. 4.

1 Henry IV. c. 18.—Process against one of the County of *Chester*, which committeth an Offence in another Shire.

*Ex Rot. in Turr.* Lond.

ITEM sur les grevouses clamour & compleinte faitz a nostre dit Seignur le Roy en cest present parlement des plusours murdres homicides roberies bateries & autres riotes & meffaites qe devant ces heures ont este faitz par les gentz del contee de Cestre as plusours lieges de Roi es diverses contees dEngleterre mesme nostre Seignur le Roi de ladvis & assent des Seignurs espirituelx & temporelx & des communes avauntditz ad ordeinez & establiz qe si ascun persone del contee de Cestre receant & demurrant deinz mesme le contee de quel estat ou condition qil soit face murdre ou felonie par aillours

"ITEM, Upon the grievous "Clamour and Complaint "made to our Lord the King in "this present Parliament, of "many Murders, Manslaugh"ters, Robberies, Batteries, "and other Riots, and Offen"ces, which before this Time "have been done by People of "the County of *Chester* to di"vers of the King's liege Peo"ple in divers Parts and "Counties of *England*;" 'the 'same our Lord the King, by 'the Advice and Assent of 'his Lords Spiritual and Tem'poral, and of his Commons 'aforesaid, hath ordained and 'stablished, That if any Per'son of the County of *Chester*, 'resident or dwelling within

No. 4. 1 Henry IV. c. 18. What Process shall be awarded where one of the County of Chester doth commit Felony in another County.

No. 4.
1 Henry IV. c. 18.

'the same County, of what Estate or Condition he be, do commit any Murder or Felony in any Place out of the same County, Process shall be made against him by the Common Law, till the Exigent, in the County where such Murder or Felony was done. And if he flee from thence into the County of *Chester*, and be outlawed and put in Exigent for such Murder or Felony, the same Outlawry or Exigent shall be certified to the Officers and Ministers of the same County of *Chester*, and the same Felon shall be taken by the same Officers or Ministers, and his Lands and Tenements, Goods and Chattels, being within the same County of *Chester*, shall be seized as forfeit into the Hands of the Prince, or of him that shall be Lord of the same County of *Chester* for the Time, and the King shall have the Year and Day, and the Waste; and the other Lands and Tenements, Goods and Chattels of such Felon, being out of the said County of *Chester*, shall remain wholly to the King, and to other Lords, having thereof Franchise, as forfeit. And if any Person of the same County of *Chester*, resident or dwelling in the same, make a Battery or other Trespass in any Place out of the said County of *Chester*, Process shall be made against him by the Common Law, till the Exigent, in the Counties where such Battery or Trespass is done. And if he flee from thence into the said County of *Chester*, and be outlawed for such Battery or Trespass, the Outlawry shall

The Process where one of the County of Chester doth make a Battery or other Trespass in any other County.

*Ex Rot. in Turr.* Lond.

hors de dit contee soit proces fait devers luy par la commune ley tanqual exigend en les contees ou tieux murdre ou felonie soit fait. Et sil fue dilloeqes en le dit conte de Cestre & soit utlage ou mys un exigend pur tiel murdre ou felonie soit la utlagarie ou lexigend certifiez a les officers & ministres de mesme le conte de Cestre & soit celle felon pris par mesmes les officers ou ministres & ses terres & tenementz biens & chateux estentz deinz ycell conte de Cestre seisez come forfaitz es mains du Prince ou de celluy qi serra Seignur de dit conte de Cestre pur le temps & ait le Roi lan jour & wast & les autres terres & tenementz biens & chateaux de tiel felon esteantz hors de mesme contee de Cestre demoergent entierment au Roi & as autres Seignurs eiantz ent franchises come forfeitz. Et si aucun persone de mesme le contee de Cestre receant ou demurrant en ycell face aucune baterie ou autre trespas par aillours hors de dit contee de Cestre soit proces fait devers lui par la commune ley tanqal exigend es contees ou tiel baterie ou trespas soit fait & sil fue dilloeqes en le dit contee de Cestree & soit utlagez pur tiel baterie ou trespas soit lutlagair certifiz a les ditz officers & ministres de mesme le contee de Cestre & soit cell persone pris par mesmes les officers ou ministres & ses biens & chateaux esteantz deinz le dit contee de Cestre soient seisez es mains du Prince ou de cellui qi serra Seignur de dit contee de Cestre pur le temps & ses autres biens & chateux esteantz hors de mesme le contee de Cestre demoerge

No. 4. Henry IV. c. 18.

entierment a Roi & as autres Seignurs suisditz come forfaitz en manere come dessus est dit.

'be certified to the Officers and 'Ministers of the said County 'of *Chester*, and the same Per-'son shall be taken by the same 'Officers or Ministers; and his 'Goods and Chattels, being 'within the same County of '*Chester*, shall be seized into 'the Hands of the Prince, or 'of him which shall be Lord of 'the said County of *Chester* for 'the Time; and his other 'Goods and Chattels, being 'out of the said County of '*Chester*, shall remain wholly 'to the King, and to other 'Lords aforesaid, as forfeit, in 'such Sort as afore is said.'

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No. 5.

2 Henry IV. c. 12.—Certain Restraints laid on wholly born *Welshmen*.

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No. 6.

2 Henry IV. c. 16.—If *Welshmen* do not restore to *Englishmen* the Distresses taken by them within seven Days, *Englishmen* may return the like Measure to them.

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No. 7.

2 Henry IV. c. 17.—If a *Welshman* commit a Felony in *England*, and thereof is attainted, and after flieth into *Wales*, upon Certificate of the King's Justices he shall be executed.

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No. 8.

2 Henry IV. c. 19.—No Englishman shall be condemned at the Suit of a Welshman in Wales, but only by English Justices, or English Burgesses.

No. 9.

2 Henry IV. c. 20.—No Welshman shall purchase Land in England, nor in the English Towns in Wales.

No. 10.

4 Henry IV. c. 26. — Englishmen shall not be convict by Welshmen in Wales.

No. 11.

4 Henry IV. c. 27.—There shall be no Wasters, Vagabonds, &c. in Wales.

No. 12.

4 Henry IV. c. 28. —There shall be no Congregations in Wales.

No. 13.

4 Henry IV. c. 29. — Welshmen shall not be armed.

No. 14.

4 Henry IV. c. 30.—No Victual or Armour shall be carried into Wales.

No. 15.

4 Henry IV. c. 31.—A Welshman shall not have any House of Defence.

No. 16.

4 Henry IV. c. 32.—No Welshman shall be an Officer.

No. 17.

4 Henry IV. c. 33.—Castles and walled Towns in Wales shall be kept by Englishmen.

## No. 18.

### 4 Henry IV. c. 34.—No English Man that marrieth a Welsh Woman shall be in any Office in Wales.

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## No. 16.

### 1 Henry V. c. 6.—No Welshman shall take Revenge against those Englishmen which did pursue their Friends in the late Rebellion.

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## No. 20.

### 26 Henry VIII. c. 4.—For Jurors in Wales.

No. 20. 26 Henry VIII. c. 4.

'WHERE for lack of diligent and sure Custody of Jurors sworn for Trials of Murtherers, Felons and Accessaries of Felonies and Murthers in *Wales* and the Marches of the same, divers Adherents, Friends and Kinsfolks to such Offenders, have resorted to the same Jurors, and have suborned them to acquit divers Murtherers, Felons and Accessaries, openly and notoriously known, contrary to Equity and Justice:' It is therefore enacted by the King our Sovereign Lord, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That forthwith, upon the Charge given to any Inquest hereafter to be taken and sworn before any Justicer, Steward, Lieutenant, or other Officer within *Wales* or the Marches of the same, of, for and upon any Traverse against the King, or the Trial of any Recognizance broken, or any other Forfeiture forfeited to the King, or of, for and upon the Trial of any Murtherer, Felon or Accessary of Felony or Murther, one Officer or other Person shall be deputed and sworn in the Presence of the said Justicer or other Officer, for the true and diligent keeping of the same Jurors; and that the same Officer or other Person so sworn, without the special Commandment of the said Justicer or other Officer, shall not do, or suffer to be ministered, to the same Jurors, any Bread, Drink, Meat, Fire or Light, nor shall suffer the same Jurors to speak to any Person or Persons; nor the same Officer or other Person sworn, without the Commandment aforesaid, shall not speak to the said Jurors, but only to demand of them of their Agreement, unto such Time as the same Jurors shall have given their Verdict; any Usage or Custom heretofore used to the contrary notwithstanding; and if the same Officer or other Person so sworn in Form aforesaid, do not execute and accomplish the Premises in the Oath before rehearsed in every Point and Article, then the same Officer, or other Person so

How an Officer sworn for the keeping of Jurors in Wales shall demean himself.

No. 20.
26 Henry VIII c. 4.

sworn, shall be punished and imprisoned, and make Fine and Ransom to the King's Highness, by the Discretion of the said Justicer, Steward, Lieutenant or other Officer.

The Penalty of Jurors in Wales committing Perjury, or otherwise misdemeaning themselves.

II. And also be it enacted by the Authority aforesaid, That if the same Jurors do acquit any such Felon, Murtherer or Accessary, upon whose Trial they shall be charged, or give any untrue Verdict against the King, upon the Trial of any Traverse, Recognizance or other Forfeiture, contrary to good and pregnant Evidence ministered to them by Persons sworn before the said Justicer, Steward, Lieutenant or other Officer, or that the said Jurors, or any of them, do eat, drink, or speak to or with any other Person or Persons than to such as be sworn with them, or otherwise misdemean themselves after they be sworn, and before they have given their Verdict, that then the Lord President, and other of the Council of the Marches for the Time being, upon Notice or Complaint thereof to them made, shall not only have Power and Authority by this present Act to call such Jurors before them, but also the said Justicer, Steward or other Officer afore whom any such Acquittal, untrue Verdict or Misdemeanor shall happen to be made, shall have full Power and Authority to compel such Jurors, and every of them, upon Pain of Imprisonment, to be bounden by Recognizance in a certain Sum of Money, by their Discretion to be limited, that the same Jurors, and every of them, shall personally appear at a certain Day, by the same Justicer, Steward or other Officer to be limited, before the Lord President, and other of the Council aforesaid for the Time being, then and there to abide and stand to such Direction and Order as the same Council shall make, ordain and decree, of, in and upon the same: and that the same Council shall thereupon have Authority and Power, by Examination or otherwise, to hear and determine all and every such Cause, and shall have like Authority to commit every of the same Jurors to Prison or other Punishment, as shall be thought most meet by the Discretion of the said Council, or otherwise assess or tax every such Juror to his Fine or Ransom by the same Discretion, to be paid and levied of their Lands, Goods and Chattels, to the Use of the King's Highness.

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## No. 21.

### 26 Henry VIII. c. 5.—For the Passage over the *Severn.*

No. 21.
26 Henry VIII. c. 5.

'FORASMUCH as daily divers Felonies, Robberies and 'Murthers been many Times committed and done in the 'Counties of *Gloucester* and *Somerset* in the Parts near adjoin-'ing unto the Water called the Water of *Severn*, between '*England* and *South Wales*, and after such Murthers and Felo-'nies done, the said Robbers, Felons, and Murtherers, with 'the said Goods so robbed and stolen, make their Conveyance 'with the said Goods so stolen, by Night, at divers Passages

'or Ferries over the said River or Water, as the Passages of 'Auste, Fremeland, Pyrton, Arlingham, Newenham, Portsedes, 'Poynte, and all such other like Passages over the said River 'into South Wales, or into the Forest called the Forest of 'Dean, also adjoining to the same Water; and when they be 'over the said Water, then the Goods so stolen, be by divers 'Privileges there kept, albeit the Owner and Owners have 'true and perfect Knowledge thereof, yet they so robbed and 'spoiled be without Remedy for to obtain their said Goods so 'stolen; so that the secret and sudden Conveyance by Night 'of the said Goods over the said Ferries and Passages, doth not 'only greatly incourage divers Persons to come out of the said 'Parts of *South Wales*, to steal, rob, and murther divers Per-'sons in their Houses in the said Counties joining upon the 'Borders of *Wales*, but also causeth many Robberies and Felo-'nies in sundry Ways to be committed and done upon the said 'Border near adjoining to the same River, to the great Damage 'and Hurt of the King's Subjects inhabiting there, unless some-'Remedy therefore be provided:' It may therefore please the King our Sovereign Lord, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, by the Authority of the same to enact, That every Person or Persons, taking upon him or them to have and keep any of the said Passages, or any other Passages upon *Severn* aforesaid, from henceforth do not convey, neither carry with any manner Barge, Boat or other Vessel, any Person or Persons with Horses, Mares, Oxen, Kine, or any other Cattle, nor no other Person or Persons, before the Time of the Sun rising in the Morning, and after the Time of the Sun being gone down at Night, upon Pain of Imprisonment and Fine to be set on him that shall so convey or carry over any of the said Passages over the said River of *Severn* out of *England* into *Wales* or the Forest of *Dean*, or out of *Wales*, or the said Forest of *Dean* into *England*, unless the said Passengers and every of them, have good Knowledge of such Person and Persons, and of their Dwelling-places; and upon Request to them made by any Person or Persons, to disclose the Name and the Dwelling-place of every such Person or Persons so by them conveyed over the said Water, to any such Person or Persons requiring the same, if Suit be made for and after them upon any Outcry, Huy or fresh Suit, of or for any Felony, Robbery, Murther or Manslaughter, committed and done from henceforth.

No. 21. 26 Henry VIII. c. 5.

The Penalty for transporting Offenders into or forth of Wales at unlawful Times.

II. And that the King's Justices of the Peace within every of the said Counties of *Gloucester* and *Somerset*, at their Quarter-Sessions, shall have full Power and Authority to call before them all such Persons which hereafter shall keep any of the said Passages, or any other Ferry or Passage over the said Water into *Wales* or the said Forest, or out of *Wales* or the said Forest into *England*, and to bind them with sufficient Sureties with them in Recognizance in such Sums of Money as it shall seem to the Discretion of the said Justices of Peace, that they and every of them, being Passengers and Keepers of Ferries

Keepers of Ferries shall be bound to transport no Offenders at unlawful Times.

No. 21. 26 Henry VIII. c. 5.

and Passages as is aforesaid, from henceforth shall not, after the said Times before limited and appointed, convey or carry, or cause to be conveyed or carried, any Manner of Person or Persons or any Kind of Cattle, but such Persons as they do know and will answer for, and know where their Abidings, Dwellings and Habitations be, and upon Request made to them or any of them as is abovesaid, shall from Time to Time disclose, as well the same Person or Persons, as the Goods and Chattels so passing the said Passages, upon fresh Suit made or hereafter to be made upon any Felony, Murther or Robbery committed and done in the Borders of the Counties aforesaid, or in any other Place within this Realm or *South-Wales*.

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## No. 22.

P. 26 Henry VIII. c. 6.—The Bill concerning Councils in *Wales*.

No. 22. 26 Henry VIII. c. 6.

'FORASMUCH as the People of *Wales* and Marches of 'the same, not dreading the good and wholsom Laws 'and Statutes of this Realm, have of long Time continued 'and persevered in Perpetration and Commission of divers 'and manifold Thefts, Murthers, Rebellions, wilful Burnings 'of Houses and other scelerous Deeds and abominable Male-'facts, to the high Displeasure of God, Inquietation of the 'King's well-disposed Subjects, and Disturbance of the publick 'Weal, which Malefacts and scelerous Deeds be so rooted and 'fixed in the same People, that they be not like to cease, 'unless some sharp Correction and Punishment for Redress 'and Amputation of the Premisses be provided, according 'to the Demerits of the Offenders:' Be it therefore enacted, &c.

[Murthers, Felonies, &c. in Wales to be inquired of in the Shires next adjoining, &c.—The long Perseverance in Wickedness of some lewd People in Wales, and the Marches thereof.—All Persons shall appear upon lawful Summons given, before the Justices in the Courts in Wales.]

[II. Wrongs done by Officers in Lordships Marchers.—Untrue Surmises feigned against them which appear to imprison them.]

[III. The Party's Remedy against the Officer which doth imprison him upon feigned Surmises.]

[IV. No Weapon shall be brought to Courts, Fairs or Churches in Wales.]

[V. None shall levy any Exactions, Commorths, or Collection, or make Games in Wales.—No Arthel shall be cast into any Court.]

[VI. All Courts shall be kept within most sure Places.—Indictment in the next County for a Felony committed within any Lordship Marcher.]

[VII. Acquittal in Lordships Marches no Bar.]

[VIII. Justices may award Process unto Lordships Marchers.—A Certificate of an Outlawry to a Lordship Marcher, &c.—By what Means an Offender shall be conveyed from one Lordship Marcher to another.]

[IX. The Officer shall return his Precept.—All Advantages saved to the Offenders.]

[X. An Offender attainted of any Felony, upon Surety found of his good Behaviour, may be discharged.] No. 22. 26 Henry VIII. c. 6.

[XI. No Liberties of Lord Marcher shall be abridged.]

[XII. Where Felonies committed in Merioneth in Wales shall be inquired of, heard and determined.—Repealed by 8 El. c. 20.]

[XIII. Where and to whom any Offender taken in Wales shall be delivered.]

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## No. 23.

### 27 Henry VIII. c. 5.—For the making of Justices of Peace within *Chester* and *Wales*.

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## No. 24.

### 27 Henry VIII. c. 7.—For the Abuses in the Forests of *Wales*. P.

'WHERE divers and many Forests being in *Wales*, and the Marches of the same, as well of the Inheritance and Possessions of our Sovereign Lord the King, as of divers others being Lords Marchers; within which Forests certain unreasonable Customs and Exactions have been of long Time unlawfully exacted and used, contrary both to the Law of God and Man, to the express Wrong and great Impoverishing of divers of the King's true Subjects, the Effect of which said unlawful Exactions and Customs be hereafter declared;' that is to wit, It hath been there unlawfully used, 'that if it fortuned any the King's Subjects to pass, go or ride through or in any Way or Path of any of the said Forests, not having upon him or them that so shall fortune to pass, go or ride, a Token delivered to him or them by the Chief Foresters, Rulers, Walkers or Farmers, the which Token shall be well known amongst all them that are Walkers and Rulers under him or them; or that he or they that so shall fortune to pass, go or ride in or through any of the said Forests, be not yearly Tributors or Chensers, then he or they so going, riding or travelling in or through any of the said Forests, having no Token, nor being yearly Tributors or Chensers, as is aforesaid, have used to pay by unlawful Exactions, unto the said Foresters, Rulers, Walkers and Farmers of the said Forests, a grievous Fine or Reward: And if any Person or Persons, not having such Token or Tokens, and not being a yearly Tributor or a Chenser, as is aforesaid, should happen to be taken, found or espied by any of the said Foresters, Rulers, Walkers or Farmers, or their Assigns, by the Space of xxiv. Foot out of the Highway, then he or they so being taken, found or espied out of the Highway, within any of the said Forests as is aforesaid, to forfeit and lose unto the said Foresters, Rulers, Walkers or Farmers, all such Money or Gold as should be then found upon him or them so being taken in any of the said Forests, out of the Highway as is aforesaid. No. 24. 27 Henry VIII. c. 7.

No. 24.
27 Henry VIII. c. 7.

'II. And also the same Person or Persons so being taken ' or found out of the Highway, to forfeit and lose a Joint of one ' of his or their Hands, or else to make Fine therefore with the ' said Foresters, Rulers, Walkers and Farmers, at the Will and ' Pleasure of the said Rulers, Walkers or Farmers.

'III. And if also that it happen any Beast or quick Cat-' tle to come, go or escape into any of the said Forests by ' Stray or Thief-stolen, or otherwise, the said Foresters, Ru-' lers, Walkers or Farmers, after Knowledge to him or them ' given, have likewise unlawfully used to seize and take the ' same Beast or Cattle as his or their own, and mark them ' with the Marks of their Forest there used, and so seized, ' marked, taken, and them retain as Cattle forfeited unto their ' own Use; by reason whereof the Owner and Owners of the ' same Cattle have been clear without Remedy for the having ' again of the said Cattle, except only by way of Redemption ' or buying again of their own Cattle, contrary to all Equity ' and Conscience:' In Consideration whereof, &c.

[IV. All the King's Subjects and Friends may pass freely through all the Forests in Wales without Payment of any unlawful Exactions.—The Penalty of such who take unlawful Exactions.]

[V. Cattle strayed, being recovered within a Year, shall be re-delivered to the Owner.—The Penalty for detaining Cattle strayed.]

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## No. 25.

### 27 Henry VIII. c. 24.—An Act for recontinuing Liberties in the Crown.

No. 25.
27 Henry VIII. c. 24.

'WHERE divers of the most ancient Prerogatives and ' Authorities of Justice, appertaining to the Imperial ' Crown of this Realm, have been severed and taken from the ' same by sundry Gifts of the King's most noble Progenitors, ' Kings of this Realm, to the great Diminution and Detriment ' of the Royal Estate of the same, and to the Hindrance and ' great Delay of Justice:' for Reformation whereof, be it enacted by Authority of this present Parliament, That no Person or Persons, of what Estate or Degree soever they be, from the first Day of *July*, which shall be in the Year of our Lord God 1536, shall have any Power or Authority to pardon or remit any Treasons, Murthers, Manslaughters, or any Kinds of Felonies, whatsoever they be; nor any Accessaries to any Treasons, Murthers, Manslaughters or Felonies; or any Outlawries for any such Offences afore rehearsed, committed perpetrated, done or divulged, or hereafter to be committed, done or divulged, by or against any Person or Persons in any Part of this Realm, *Wales*, or to the Marches of the same; but that the King's Highness, his Heirs and Successors, Kings of this Realm, shall have the whole and sole Power and Authority, thereof united and knit to the Imperial Crown of this Realm as of good Right and Equity it appertaineth; any Grants

No Person shall pardon Treasons or Felonies but the King.

No. 25.
27 Henry VIII. c. 24.

Usages, Prescriptions, Allowances, Act or Acts of Parliament, or any other Thing to the contrary hereof notwithstanding.

No Person shall make Justices but the King.

II. And be it also enacted by Authority aforesaid, That no Person or Persons, of what Estate, Degree or Condition soever they be, from the said first Day of *July*, shall have any Power or Authority to make any Justices of Eyre, Justices of Assise, Justices of Peace, or Justices of Gaol Delivery; but that all such Officers and Ministers shall be made by Letters Patents under the King's Great Seal, in the Name and by Authority of the King's Highness and his Heirs, Kings of this Realm, in all Shires, Counties, Counties Palatine, and other Places of this Realm, *Wales*, and the Marches of the same, or in any other his Dominions, at their Pleasure and Wills, in such Manner and Form as Justices of Eyre, Justices of Assise, Justices of Peace, and Justices of Gaol-delivery, be commonly made in every Shire of this Realm; any Grants, Usages, Prescriptions, Allowances, Act or Acts of Parliament, or any other Thing or Things to the contrary thereof notwithstanding.

All Writs, &c. in a County Palatine shall be made in the King's Name.

III. And be it further enacted by Authority of this present Parliament, That all original Writs and judicial Writs, and all manner of Indictments of Treason, Felony and Trespass, and all manner of Process to be made upon the same, in every County Palatine, and other Liberty within this Realm of *England*, *Wales*, and Marches of the same, shall from the said first Day of *July* be made only in the Name of our said Sovereign Lord the King, and his Heirs Kings of *England*; and that every Person or Persons having such County Palatine, or any other such Liberty to make such Originals, Judicials or other Process of Justice, shall make the *Teste* in the said original Writs and Judicial, in the Name of that same Person or Persons that have such County Palatine or Liberty.

IV. And that in every Writ and Indictment that shall be made within any such County Palatine or Liberty, after the said first Day of *July* next coming, whereby it shall be supposed any Thing to be done against the King's Peace, shall be made and supposed to be done only against the King's Peace, his Heirs and Successors, and not against the Peace of any other Person or Persons whatsoever they be; any Act of Parliament, Grant, Custom, Usage or Allowance in Eyre before this Time had, granted or used, to the contrary notwithstanding.

Justices assigned within the County Palatine of Lancaster.

V. Provided always, That Justices of Assise, Justices of Gaol-delivery, and Justices of Peace, to be made and assigned by the King's Highness within the County Palatine of *Lancaster*, shall be made and ordained by Commission under the King's usual Seal of *Lancaster*, in Manner and Form as hath been accustomed; any Thing in this Act to the contrary thereof notwithstanding.

Towns corporate which have Justices.

VI. Provided also, That all Cities, Boroughs, and Towns Corporate within this Realm, which have Liberty, Power and Authority to have Justices of Peace, or Justices of Gaol-delivery, shall still have and enjoy their Liberties and Authori-

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ties in that Behalf, after such like Manner as they have been accustomed, without any Alteration by Occasion of this Act; any Thing in this Act, or in any Article therein contained to the contrary thereof notwithstanding.

Bailiffs and Officers of Liberties shall attend upon the Justices as they have done.

VII. And it is ordained by Authority aforesaid, That all Stewards, Bailiffs, and other Ministers of any Liberties or Franchises, which in Times past have used, or ought to attend upon the Justices of Assise, Justices of Gaol-delivery, and Justices of the Peace at large in any County, shall be attendant to the Justices of Assise, Justices of Gaol-delivery, and Justices of Peace of the same Shires wherein such Liberties and Franchises be, and make due Execution of all Process to them to be directed, for Ministration of Justice within such Liberties or Franchises; and that also all such Bailiffs, or their Deputies or Deputy, shall give their Attendance and Assistance upon the Sheriff, together with the Sheriffs Bailiffs, at all Courts of Gaol-delivery from Time to Time, for Execution of Prisoners according to Justice.

Liberties of Cities or Boroughs not to appear elsewhere.

VIII. Provided always, that the Article next above rehearsed shall not in any wise be prejudicial to any Stewards, or Bailiffs of any Cities, Boroughs or Towns corporate set in any Shire of this Realm, which have Privilege that they should not be compelled to attend or appear out of such Cities, Boroughs or Towns wherein they inhabit, but that every such City, Borough and Town corporate, shall use their said Privileges and Liberties as heretofore hath been accustomed; any Thing in any of the Articles above rehearsed to the contrary thereof notwithstanding.

The King shall have the Fines, &c. of Bailiffs of Liberties.

IX. And it is further enacted by Authority aforesaid, That the King our Sovereign Lord, his Heirs and Successors, Kings of this Realm, from the said first Day of *July* next coming, shall have all Manner of Fines, Issues, Amerciaments and Forfeitures that shall be lost, forfeit or assessed by or upon any Stewards, Bailiffs, or any other Ministers or Officers of any Franchises or Liberties, for Non-execution, Mis-execution or insufficient Returns of such Writs, Warrants, Precepts or other Process, which to them, or to any of them, or to any their Deputy or Deputies, shall be directed, or for any Contempt, or other Misdemeanor whatsoever it be, concerning their Offices, in and for the due Execution or Administration of Justice; any Grant or Allowance, or other Thing to the contrary hereof notwithstanding. And that the Amerciaments for insufficient Returns of Writs, or other Process, made by Stewards or Bailiffs of Liberties or Franchises, having Returns of Writs and Execution of the same, shall be put and set upon the Heads of such Stewards or Bailiffs, and not upon the Sheriffs.

Fines shall be assessed upon Bailiffs of Liberties for insufficient Returns, and not upon the Sheriff.

Purveyors may provide within Liberties, notwithstanding any Grant.

X. And furthermore it is enacted by Authority aforesaid, That Purveyors assigned by the King's Commission for Provisions of his Grace, the Queen and their Children shall and may provide all Victuals, Corn, and other Kind of Things whatsoever it be, according to their Commissions, as well

within Liberties and Franchises as without; any Grants, Allowances, or other Thing to the contrary or Let thereof notwithstanding.

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XI. Provided always, That such Purveyors shall observe the Statutes for them provided in every Behalf.

XII. And over this it is ordained by Authority aforesaid, That in all such Places wheresoever the King's Highness in his own most Royal Person shall come to rest, tarry, abide, or make his Repose within this Realm, or any his Dominions, within Liberty or without, there and within the Verge limited and accustomed to his Grace's Court, during the Time of his Abode, his Grace's Steward, Marshal, Coroner, and all other his Ministers, shall and may keep their Courts for Justice, and exercise their Offices, as shall appertain to them, according to the Laws, Statutes, and Customs of this Realm, as well within Liberties as without. And that his Grace's Clerks of the Market, and none other, during the same Time, as well within Liberties as without, shall exercise the Office of Clerk of the Market: any Privilege, Grant, Allowance or other Thing to the contrary hereof notwithstanding.

The King's Officers may keep Court within the Verge, and his Clerk of the Market only execute his Office there.

XIII. Provided alway, That this Article next afore rehearsed, or any thing therein contained, be not in any wise prejudicial to the City of *London*, but that the same City shall have and use such Liberties as they might if this Article had never been made.

XIV. And be it also enacted by Authority aforesaid, That all and every Statute, Act and Acts heretofore made and being in Force, against Sheriffs, their Under Sheriffs, Bailiffs, or other Ministers, for making or returning of Panels or Juries, or for due Execution of serving of any Writs or other Process, or for taking of Fees, or for Reformation of Extortions, or for any other Thing or Things concerning their Offices, and all Pains and Penalties contained in every such Statute, shall from henceforth be extended to all Stewards, Bailiffs, and other Ministers and Officers of Liberties and Franchises, having Returns of Writs and Executions thereof, in like Manner, Form and Condition, as they extend to the Sheriffs, their Undersheriffs Bailiffs or other Ministers, and as if the said Stewards, Bailiffs or other Ministers, or Officers of Liberties and Franchises had been specially and particularly named and rehearsed in such Statutes.

All Statutes made for Sheriffs, Under-Sheriffs, &c. shall be in force against Stewards and other Ministers of Liberties.

XV. Provided alway, That this Article next above rehearsed shall not be prejudicial to any Steward, Bailiffs of Franchises, or to their Deputy or Deputies, or their Clerks, for exercising and occupying their Offices over and above one Year; but that they and every of them may keep and occupy their said Offices for so long Time as they be, or hereafter shall be, given to them, as if this Article next afore rehearsed, had never been made; any of the said Acts to be expounded and taken against them or any of them to the contrary thereof notwithstanding.

Stewards and Bailiffs of Franchises may enjoy their Offices above one Year.

XVI. And it is enacted by Authority aforesaid, That all such Justices to be made as is afore rehearsed in this Act, shall

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have Authority and Power to keep and hold their Sessions of Peace, and to deliver the same Gaols from Time to Time only within the same Liberties and Franchises, and in such Places, and in none other Places, by Reason and Authority of that Commission, and to do and execute all other Things within the same, in as ample and large Manner, as any other Justices of Peace and Gaol-delivery in any Shire within this Realm may do, and have Authority to do; any Act, Grant, Use, Custom and Allowance heretofore had, made or used, or any Article in this present Act made to the contrary notwithstanding.

The new Justices shall sit where commonly such have used to be before.

XVII. Provided always, That all and singular Justices of the Peace, Gaol-delivery and Assise, hereafter to be made, named and appointed by the King's Highness, his Heirs and Successors, within any Liberty, where any such Justice of Peace, Gaol-Delivery or Assise, or any of them, have been made by any Person or Persons by Virtue or Authority of any Letters Patents of the Gift or Grant of our Sovereign Lord the King, or his most noble Progenitors, Kings of this Realm, or otherwise, shall sit and keep their Sessions, Gaol-delivery and Assises, only in such Place and Places as the Justices of the said Liberties lately have commonly used within the said Liberties. And that no Person or Persons within the said Liberties, or any of them, shall be hereafter in any wise compelled by Authority of this Act to appear out of the said Liberties before any other Justices of Assise, Gaol-delivery, or of the Peace, than before such Justices as shall be named and assigned to sit and be by the King's Highness, his Heirs and Successors, within the said Liberties in Form abovesaid. And that this Act shall not extend, or be expounded or taken to extend to any other Liberty, Privilege or Franchise, granted, used or had to any Person or Persons, other than before in this present Act is expressed, and plainly declared and rehearsed; any Thing in this Act to the contrary notwithstanding, and as if this Act had never been made.

Sir Thomas Englefield, Justice of Chester and Flint.

XVIII. Provided always, That this Act, nor any Thing therein contained, be in any wise hurtful or prejudicial unto Sir *Thomas Englefield*, Knight, Justice of the County Palatine of *Chester* and *Flint*, nor to his Deputy or Deputies, nor to any of them, of, for or concerning the Office of Justice or Justicer of the said County Palatine and *Flint*, nor for or concerning any Fees, Profits or Advantages to the same Office in any Manner wise appertaining or belonging; but that the said Sir *Thomas*, his Deputy and Deputies, and every of them, may lawfully have, occupy and exercise the said Office, and also receive and take to their own Use all manner Profits, Commodities and Advantages to the said Office belonging or appertaining, according to the Tenor, Purport and Effect of such Letters Patents, as before this Time were unto the same Sir *Thomas* made under the Seal of the said County Palatine, or under any other Seal, by our said Sovereign Lord the King that now is, of, for or concerning the said Office and other the Premis-

ses, or any Parcel thereof, in as ample and large manner as though this Act had never been had ne made; any Thing in this Act contained to the contrary in any wise notwithstanding.

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XIX. Provided alway, That this Act, ne any Thing therein contained, be in any wise prejudicial or hurtful to any City, Borough or Town corporate, by what Name or Names soever they or any of them be incorporate, and their Successors, and the Successors of every of them, of or for any Manner of Liberties, Privileges, Customs, ancient Usages and Franchises; and also of all Manner of Fines, Issues and Amerciaments, and Forfeitures, which they or any of them have of the Grant or Grants of our said Sovereign Lord the King, or of any of his noble Progenitors, Kings of this Realm of *England*; but that the said Cities, Boroughs and Towns corporate, and every of them and their Successors, may have, take, levy and enjoy all and every such lawful Liberties, Privileges, Franchises, Customs and Usages, in as ample and large Manner, and in like Form and Condition, as they and every of them have lawfully taken, used and had the same before the making of this Act; any Thing in this Act to the contrary notwithstanding, and as if this Act had never been had ne made.

Cities & Towns corporate shall have such Liberties, &c. as they had before.

XX. Provided alway, and be it enacted, That *Thomas* now Bishop of *Ely*, and his Successors, Bishops of *Ely*, and their temporal Steward of the Isle of *Ely* for the Time being, and every of them, shall from henceforth be Justices of Peace within the said Isle, and shall use and exercise all Manner of Things within the same Isle, that appertaineth or belongeth to any Justices of Peace within any County of this Realm of *England* to do, exercise and use, by Virtue and Authority that they be Justices of Peace, in as ample and large Manner as any other Justices of Peace in any County within this Realm have or might do, exercise or use; any Thing or Things in this Act contained to the contrary notwithstanding.

The Bishop of Ely and his Steward shall be Justices of Peace within the same Isle.

XXI. Provided alway, and be it enacted, That *Cuthbert* now Bishop of *Durham*, and his Successors, Bishops of *Durham*, and their temporal Chancellor of the County Palatine of *Durham* for the Time being, and every of them, shall from henceforth be Justices of Peace within the said County Palatine of *Durham*, and shall exercise and use all manner Things within the same County Palatine, that appertaineth or belongeth to any Justice of Peace within any County of this Realm of *England*, to do, exercise and use, by Virtue and Authority that they be Justices of Peace, in as ample and large Manner as any other Justices of Peace in any County within this Realm have, or might do, exercise or use, any Thing or Things in this Act contained to the contrary notwithstanding.

The Bishop of Durham and his Chancellor.

XXII. Provided alway, and be it enacted, That *Edward* now Archbishop of *York*, and his Successors, Archbishops of *York*, and their temporal Chancellor of the Shire and Liberty of *Hexam*, otherwise called *Hextoldsham*, for the Time being, and every of them shall from henceforth be Justices of Peace within the said Shire and Liberty of *Hexam*, otherwise

The Bishop of York and his temporal Chancellor of Hextoldsham.

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called *Hextoldsham*, and shall exercise and use all manner of Things within the said Shire and Liberty, that appertaineth or belongeth to any Justice of Peace within any County of this Realm of *England* to do, exercise and use, by Virtue and Authority that they be Justices of Peace in as large and ample Manner as any other Justice of Peace in any County within this Realm have, or might do, exercise or use; any Thing or Things in this Act contained to the contrary notwithstanding.

## No. 26.

### 27 Henry VIII. c. 26.—Concerning the Laws to be used in *Wales*.

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The Causes why a Diversity hath been made between the King's Subjects of England and Wales.

'ALBEIT the Dominion, Principality and Country of *Wales* ' justly and righteously is, and ever hath been incorporated, annexed, united and subject to and under the imperial ' Crown of this Realm, as a very Member and Joint of the same, ' wherefore the King's most Royal Majesty of meer Droit, and ' very Right, is very Head, King, Lord and Ruler; yet notwithstanding, because that in the same Country, Principality, ' and Dominion, divers Rights, Usages, Laws and Customs ' be far discrepant from the Laws and Customs of this Realm, ' and also because that the People of the same Dominion have, ' and do daily use a Speech nothing like, ne consonant to the ' natural Mother Tongue used within this Realm, some rude ' and ignorant People have made Distinction and Diversity ' between the King's Subjects of this Realm, and his Subjects ' of the said Dominion and Principality of *Wales*, whereby ' great Discord, Variance, Debate, Division, Murmur and Sedition hath grown between his said Subjects;' His Highness therefore of a singular Zeal, Love and Favour that he beareth towards his Subjects of his said Dominion of *Wales*, minding and intending to reduce them to the perfect Order, Notice and Knowledge of his Laws of this his Realm, and utterly to extirp all and singular the sinister Usages and Customs differing from the same, and to bring the said Subjects of this his Realm, and of his said Dominion of *Wales*, to an amicable Concord and Unity, hath by the deliberate Advice, Consent and Agreement of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, ordained, enacted and established, That his said Country or Dominion of *Wales* shall be, stand and continue for ever from henceforth incorporated, united and annexed to and with this his Realm of *England*; and that all and singular Person and Persons, born and to be born in the said Principality, Country or Dominion of *Wales*, shall have, enjoy and inherit all and singular Freedoms, Liberties, Rights, Privileges and Laws within this his Realm, and other the King's Dominions, as other the King's Subjects naturally born within the same have, enjoy and inherit.

All Persons born in Wales shall enjoy all Liberty as other Subjects in England do.

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II. And that all and singular Person and Persons inheritable to any Manors, Lands, Tenements, Rents, Reversions, Services or other Hereditaments, which shall descend after the Feast of *All-Saints* next coming, within the said Principality, Country or Dominion of *Wales*, or within any particular Lordship, Part or Parcel of the said Country or Dominion of *Wales*, shall for ever, from and after the said Feast of *All-Saints*, inherit and be inheritable to the same Manors, Lands, Rents, Tenements, Reversions and Hereditaments, after the *English* Tenure, without Division or Partition, and after the Form of the Laws of this Realm of *England*, and not after any *Welsh* Tenure, ne after the Form of any *Welsh* Laws or Customs, and that the Laws, Ordinances and Statutes of this Realm of *England*, for ever, and none other Laws, Ordinances, ne Statutes, from and after the said Feast of *All-Saints* next coming, shall be had, used, practised and executed in the said Country or Dominion of *Wales*, and every Part thereof, in like Manner, Form and Order, as they be and shall be had, used, practised, and executed in this Realm, and in such like Manner and Form as hereafter by this Act shall be further established and ordained; any Act, Statute, Usage, Custom, Precedent, Liberty, Privilege, or other Thing had, made, used, granted or suffered to the contrary in any wise notwithstanding.

The Laws of England shall be used in Wales.

'III. And forasmuch as there be many and divers Lordships Marches within the said Country or Dominion of *Wales*, lying between the Shires of *England* and the Shires of the said Country or Dominion of *Wales*, and being no Parcel of any other Shires where the Laws and due Correction is used and had, by reason whereof hath ensued, and hath been practised, perpetrated, committed and done, within and among the said Lordships and Countries to them adjoining, manifold and divers detestable Murthers, brenning of Houses, Robberies, Thefts, Trespasses, Routs, Riots, unlawful Assemblies, Embraceries, Maintenances, receiving of Felons, Oppressions, Ruptures of the Peace, and manifold other Malefacts, contrary to all Laws and Justice; and the said Offenders thereupon making their Refuge from Lordship to Lordship, were and continued without Punishment or Correction; for due Reformation whereof, and forasmuch as divers and many of the said Lordships Marchers be now in the Hands and Possession of our Sovereign Lord the King, and the smallest Number of them in the Possession of other Lords,' It is therefore enacted by the Authority aforesaid, That divers of the said Lordships Marchers shall be united, annexed and joined to divers of the Shires of *England*, and divers of the said Lordships Marchers shall be united, annexed and joined to divers of the Shires of the said Country or Dominion of *Wales*, in Manner and Form hereafter following; and that all the Residue of the said Lordships Marchers within the said Country or Dominion of *Wales*, shall be severed and divided into certain particular Counties or Shires, that is to say, the County or Shire of *Monmouth*, the County or Shire of

Lordships Marchers, and the Disorders committed therein.

Divided into Shires.

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Monmouth and the Towns within the same.

*Brecknock*, the County or Shire of *Radnor*, the County or Shire of *Montgomery*, the County or Shire of *Denbigh*; and that the Lordships, Townships, Parishes, Commotes and Cantreds of *Monmouth, Chepstow, Matherne, Llanvihangel, Magour, Goldecliffe, Newport, Wenlonge, Llanwerne, Caerlion, Usk, Treleck, Tintern, Skynfreth, Gronsmont, Witecastle, Reglan, Calicote, Biston, Abergaveuny, Penrose, Grenefield, Maghen*, and *Hochuyslade* in the Country of *Wales*, and all and singular Honours, Lordships, Castles, Manors, Lands, Tenements and Hereditaments, lying or being within the Compass or Precinct of the said Lordships, Townships, Hamlets, Parishes, Commotes and Cantreds, and every of them, in whose Possession soever they be or shall be, and every Part thereof, shall stand and be from and after the said Feast of *All-Saints* guildable, and shall be reputed, accepted, named and taken as Parts and Members of the said Shire of *Monmouth*; and that the said Town of *Monmouth* shall be named, accepted, reputed, used, had and taken, Head or Shire-town of the said County or Shire of *Monmouth*; and that the Sheriffs County or Shire-court of and for the said Shire and County of *Monmouth*, shall be holden and kept one Time at the said Town of *Monmouth*, and the next Time at the Town of *Newport*, in the same County or Shire, and so to be kept in the same two Towns *alternis vicibus*, and according to the Laws of this Realm of *England* for ever, and in none other Places.

Actions in the County of Monmouth.

IV. And it is further enacted by the Authority aforesaid, That all Actions reals that hereafter shall be conceived, perpetrated or sued for any Lands, Tenements or Hereditaments, or any other Thing within the said County or Shire of *Monmouth*, and all Actions personals, within the same Shire or County of the Sum of *xl. s.* or above, and all Actions mixt, shall be sued by original Writ out of the King's High Court of Chancery in *England*, and heard, determined and tried before the King's Justices in *England*, or by Assise or *Nisi Prius* within the said County of *Monmouth*, in such like Manner, Form and Wise, as all other Actions reals, personals, and Actions mixt, be sued, heard, determined and tried in or for any Shire of this Realm of *England*; and that the King's Justices of his Bench, or of his Common Bench of *Westminster*, shall have full Power and Authority to direct all manner Process to the Sheriff and all other Officers of the said County of *Monmouth*, and also to direct Writs of *Venire facias* to the same Sheriff, for the Trial of every Issue joined before them: and also to award Commissions of *Nisi Prius* into the said County of *Monmouth*, for the Trial of such Issues joined before them, in like Manner and Form as they do into every Shire of this Realm of *England*; and all and every the King's Subjects and Inhabitants within the said County of *Monmouth*, shall be for ever, from and after the said Feast of *All-Saints*, obliged and bounden to be obedient and attendant to the Lord Chancellor of *England*, the King's Justices, and other of the King's most honourable Council, and unto all Laws, Customs,

The King's Justices may award Venire fac' into Monmouth, &c.

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Ordinances and Statutes of this Realm of *England*, in like Manner, Form and Wise, as all other the King's Subjects within every Shire of this Realm of *England* be obliged and bounden; any Act, Statute, Usage, Custom, Liberty, Privilege, or any other Thing to the contrary in any wise notwithstanding; and that the Sheriff of the said County shall hold Plea of *Replegiare*, and all other Suits and Plaints under forty Shillings, in his County or Shirecourt, in like Manner and Form as all other Sheriffs do within this Realm of *England*; and that the Sheriff, Escheators, and Coroners, that hereafter shall be within the said County or Shire of *Monmouth*, shall be obliged and bounden to execute all the King's Processes, and to make due Returns thereof, and to use and exercise their Offices according to the Laws and Statutes of this Realm of *England*, in all and every Thing, as the Sheriffs, Escheators and Coroners be obliged and bounden to do in all and every other Shire of this Realm of *England*; and that the Sheriffs and Escheators of the said Shire or County of *Monmouth*, that hereafter shall be appointed by our Sovereign Lord the King, make their Accounts for their said Offices in the King's Exchequer in *England*, in like Manner and Form as other Sheriffs and Escheators do within this Realm of *England*, and upon such like Pain and Penalty as is upon other Sheriffs and Escheators in every other Shire within this Realm of *England*.

The Sheriff's and Escheator's of Monmouth's Duties.

V. And it is enacted by the Authority aforesaid, That the Lordships, Townships, Parishes, Commotes and Cantreds of *Brecknock*, *Creckhowell*, *Tretowre*, *Penkelly*, *English-talgarth*, *Welsh-talgarth*, *Dynas*, the *Haye*, *Glynebough*, *Broyulles*, *Cantercely*, *Lando*, *Blaynllinby*, *Estrodew*, *Buelthe*, and *Lingros*, in the said Country or Dominion of *Wales*, and all and singular Honours, Lordships, Castles, Manors, Lands, Tenements, and Hereditaments, lying or being within the Compass or Precinct of the said Lordships, Parishes, Commotes and Cantreds, or any of them, in whose Possession soever they be or shall be, and every Part thereof, shall stand and be for ever from the said Feast of *All Saints* guildable, and shall be reputed, accepted, named and taken as Parts and Members of the said County or Shire of *Brecknock*, and that the said Town of *Brecknock* shall be named, accepted, reputed, used, had and taken, Head and Shire-town of the said Shire or County of *Brecknock*; and that the Shire-court or County of and for the said Shire or County of *Brecknock*, shall be holden and kept in the said Town of *Brecknock*.

Brecknockshire

VI. And it is enacted by the Authority aforesaid, That the Lordships, Townships, Parishes, Commotes and Cantreds of *New Radnor*, *Elistherman*, *Elue-les*, *Bonghread*, *Glaseberry*, *Glowdistre*, *Mihelles Church*, *Meleneth*, *Blewagh*, *Knighton*, *Norton*, *Preston*, *Commothuder*, *Rayder*, *Gwethronyon*, and *Stanage* in the said Country of *Wales*, and every of them, and all and singular Honours, Lordships, Castles, Manors, Lands, Tenements and Hereditaments, lying or being within the Compass or Precinct of the said Lordships, Townships, Pa-

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rishes, Commotes and Cantreds, or any of them, in whose Possession soever they be or shall be, and every Part thereof, shall stand and be for ever, from the said Feast of *All Saints*, guildable, and shall be reputed, accepted, named and taken as Parts and Members of the said County or Shire of *Radnor;* and that the said Town of *New Radnor* shall be named, accepted, reputed, used, had and taken Head and Shire-town of the said County or Shire of *Radnor;* and that the Shire-court or County of and for the said County or Shire of *Radnor*, shall be holden and kept one Time at the said Town of *New Radnor*, and the next Time at the Town of *Rothergowy*, in the same County or Shire, and so to be kept in the said two Towns *alternis vicibus* for ever, and in none other Place.

The County Court of Radnor.

Montgomeryshire.

VII. And it is enacted by the Authority aforesaid, That the Lordships, Townships, Parishes, Commotes and Cantreds of *Mountgomery, Kedewenkerry, Cawrsland, Arustely, Keviliock, Doythur, Powesland, Clunesland, Balesley, Tempcester* and *Alcester*, in the said Country of *Wales*, and every of them, and all and singular Honours, Lordships, Castles, Manors, Lands, Tenements and Hereditaments, lying or being within the Compass or Precinct of the said Lordships, Parishes, Townships, Commotes and Cantreds, or in any of them, in whose Possession soever they be or shall be, and every Part thereof, shall stand and be for ever, from the said Feast of *All-Saints*, guildable, and shall be reputed, accepted, named and taken, as Parts and Members of the said County or Shire of *Mountgomery;* and that the said Town of *Mountgomery* shall be named, accepted, reputed, used, had and taken Head and Shire-town of the said County of *Mountgomery;* and that the County or Shire-court of and for the said County or Shire of *Mountgomery*, shall be holden and kept the first Time at the said Town of *Mountgomery*, and the next Time at the Town of *Maghenleth*, in the same Shire or County, and so to be kept in the same two Towns *alternis vicibus* for ever, and in none other Place.

Denbighshire.

VIII. And also it is enacted by the Authority aforesaid, That the Lordships, Townships, Parishes, Commotes and Cantreds of *Denbighland, Ruthin, Saint Tasse, Kinllethowen, Bromfilde, Yale, Chirke* and *Chirkeland, Molesdale* and *Hopesdale*, in the said Country of *Wales*, and every of them, and all and singular Honours, Lordships, Castles, Manors, Lands, Tenements and Hereditaments, lying or being within the Compass or Precinct of the said Lordships, Townships, Commotes and Cantreds, or any of them, in whose Possession soever they be or shall be, and every Part thereof, shall stand and be for ever, from the said Feast of *All-Saints*, guildable, and shall be reputed, accepted, named and taken as Parts and Members of the said County or Shire of *Denbigh;* and that the said Town of *Denbigh* shall be named, accepted, reputed, used, had and taken Head and Shire-town of the County or Shire of *Denbigh;* and that the County or Shire-court of and for the said County or Shire of *Denbigh*, shall be holden and kept the first Time at

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the said Town of *Denbigh*, and the next Time at the Town of *Wrixham* in the said Shire or County, and so to be kept in the same two Towns *alternis vicibus* for ever, and in none other Place.

The King shall have a Chancery and Exchequer at Brecknock, and another at Denbigh.

'IX. And forasmuch as the Counties or Shires of *Brecknock, Radnor, Mountgomery* and *Denbigh* be far distant from 'the City of *London*, where the Laws of *England* be commonly 'used, ministred, exercised and executed; and for that the 'Inhabitants of the said Shires of *Brecknock, Radnor, Mountgomery* and *Denbigh*, be not of Substance, Power and Ability 'to travel out of their Countries to seek the Administration of 'Justice;' it is therefore enacted by the Authority aforesaid, That the King our Sovereign Lord shall have one Chancery and Exchequer at his Castle of *Brecknock*, and one other at his Town and Castle of *Denbigh*; and that the Sheriffs, Escheators, and other Officers Accomptants of the Counties of *Brecknock, Radnor, Mountgomery* and *Denbigh*, from and after the said Feast of *All-Saints*, shall be yearly appointed by our Sovereign Lord the King, for and within every of the said Shires of *Brecknock, Radnor, Mountgomery* and *Denbigh*; and that the Sheriffs, Escheators and other Officers Accomptants of the Counties of *Brecknock* and *Radnor*, from and after the said Feast of *All-Saints*, shall yearly make their Accompts before the King's Auditors, and such Chamberlain or Baron of the said Exchequer, as shall be thereunto appointed by our said Sovereign Lord the King, in such like Manner and Form as Sheriffs, Escheators and other Officers Accomptants do yearly make their Accompts in the King's Exchequer at *Westminster* within this Realm of *England*: And that the Sheriffs, Escheators, and other Officers Accomptants of the Counties of *Mountgomery* and *Denbigh*, from and after the said Feast of *All-Saints*, shall yearly make their Accompts before the King's Auditors, and such Chamberlain or Baron of the said Exchequer, as shall be thereunto appointed by our said Sovereign Lord the King, in such like Manner and Form as Sheriffs, Escheators and other Officers Accomptants do yearly make their Accompts in the King's Exchequer at *Westminster* within this Realm of England.

The Accounts of the Sheriffs, Escheators, and other Officers.

Justice used in Brecknock, Radnor, Mountgomery and Denbigh.

X. And that Justice shall be ministred, used, exercised and executed unto the King's Subjects and Inhabitants in every of the said Shires of *Brecknock, Radnor, Montgomery* and *Denbigh*, according to the Laws and Statutes of this Realm of *England*, and according to such other Customs and Laws now used in *Wales* aforesaid, as the King our Sovereign Lord and his most honourable Council shall allow and think expedient, requisite and necessary, by such Justicer or Justicers as shall be thereunto appointed by our said Sovereign Lord the King, and after such Form and Fashion as Justice is used and ministred to the King's Subjects within the three Shires of *North Wales*.

Towns annexed to the County of Salop.

XI. And also it is enacted by the Authority aforesaid, That the Lordships, Towns, Parishes, Commotes, Hundreds and

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Cantreds of *Oswester*, *Whetington*, *Masbroke*, *Knoking*, *Ellesmer*, *Downe*, and *Churbury* Hundred in the Marches of *Wales* aforesaid, and every of them, and all and singular Honours, Lordships, Castles, Manors, Towns, Hamlets, Lands, Tenements and Hereditaments lying or being within the Compass or Precinct of the said Lordships, Towns, Parishes, Commotes, Hundreds and Cantreds, or any of them, in whose Possession soever they be or shall be, and every Part thereof, shall stand and be for ever, from and after the said Feast of *All-Saints*, guildable, and shall be united, annexed and joined to and with the County of *Salop*, as a Member, Part or Parcel of the same; and that the said Lordships of *Oswester*, *Whetington*, *Masbroke* and *Knoking*, with their Members, shall be taken, named and known by the Name of the Hundred of *Oswester* in the County of *Salop*; and the Inhabitants thereof shall be attendant and do every Thing and Things at every Sessions, Assise and Gaol-delivery, to be holden within the County of *Salop*, as the Inhabitants of all other Hundreds do within the said County of *Salop*, according to the Laws of this Realm of *England*. And that the Lordship of *Ellesmer*, with the Members of the same, shall be united, joined and knit to the Hundred of *Pymhill* in the County of *Salop*, and shall be taken, named and known to be Parcel of the same Hundred; and the Inhabitants thereof shall be attendant and do every Thing and Things with the Inhabitants of the said Hundred of *Pymhill*, as the Inhabitants of the same Hundred now do and use, according to the Laws of this Realm of *England*. And that the Lordship of *Downe*, with the Members, shall be united, joined and knit to the Hundred of *Churbury* in the County of *Salop*; and that the Inhabitants of the said Hundred of *Churbury* and Lordship of *Downe* shall be attendant and do every Thing and Things at every Sessions, Assise and Gaol-delivery, to be holden within the said County of *Salop*, as the Inhabitants of all other Hundreds do within the said County of *Salop*, according to the Laws of this Realm of *England*. And that the said Hundred of *Churbury*, after the said Feast of *All-Saints*, nor the said Hundred of *Oswester*, nor yet the Lordship of *Ellesmer*, shall be in no wise otherwise privileged, nor have no other Liberty nor Privilege, but as Hundreds united, annexed and knit to the said County of *Salop*, as other Hundreds be within the said County.

Oswestre Hundred in the County of Salop.

Ellesmer in Pymhill Hundred.

Downe in Churbury Hundred.

Towns annexed to the County of Hereford.

XII. And that the Lordships, Towns, Parishes, Commotes, Hundreds and Cantreds of *Ewyas Lacy*, *Ewyas Harold*, *Clifford*, *Wynfortan*, *Yerdesley*, *Huntington*, *Whytney*, *Wygmore*, *Logharneys* and *Stepulton* in the said Marches of *Wales*, and every of them, and all and singular Honours, Lordships, Castles, Manors, Lands, Tenements and Hereditaments, lying or being within the Compass or Precinct of the said Lordships, Towns, Parishes, Commotes, Hundreds and Cantreds, or any of them, in whose Possession soever they be or shall be, and every Part thereof, shall stand and be for ever, from and after the said Feast of *All-*

*Saints*, guildable, and shall be united, annexed and joined to and with the County of *Hereford*, as a Member, Part or Parcel of the same County of *Hereford*; and that the Lordships of *Wygmore* and *Logharneys*, with their Members, shall be taken, named and known by the Name of the Hundred of *Wygmore* in the County of *Hereford* aforesaid; and that the Inhabitants thereof shall be attendant and do every Thing and Things at every Sessions, Assise and Gaol-delivery, to be holden within the said County of *Hereford*, as the Inhabitants of all other Hundreds do within the said County of *Hereford*, according to the Laws of this Realm of *England*. And that the whole Lordship of *Ewyas Lacy*, with the Members, shall be taken, named and known by the Name of the Hundred of *Ewyas Lacy* within the said County of *Hereford*; and the Inhabitants thereof shall be attendant and do every Thing and Things at every Sessions, Assise and Gaol-delivery, to be holden within the said County of *Hereford*, as the Inhabitants of all other Hundreds do within the said County of *Hereford*, according to the Laws of this Realm of *England*. And that the Lordship of *Ewyas Harold*, with the Members, shall be united, joined and knit to the Hundred of *Webtree* in the said County of *Hereford*, and shall be taken, named and known to be Parcel of the said Hundred of *Webtree*; and the Inhabitants thereof shall be attendant and do every Thing and Things with the Inhabitants of the same Hundred of *Webtree*, as the Inhabitants of the same Hundred now do, according to the Laws of this Realm of *England*. And that the Lordships of *Clifford*, *Wynforton*, *Yerdesley*, *Whitney* and *Huntingdon*, with their Members, shall be taken, named and known by the Name of the Hundred of *Huntingdon*, within the County of *Hereford* aforesaid, and that the Inhabitants thereof shall be attendant and do every Thing and Things at every Sessions, Assise and Gaol-delivery, to be holden within the said County of *Hereford*, as the Inhabitants of all other Hundreds do within the said County of *Hereford*, according to the Laws of this Realm of *England*. And that the said Hundred of *Wygmore*, with the Members, and the said Hundred of *Ewyas Lacy*, and the said Hundred of *Huntington*, and the said Lordship of *Ewyas Harold*, annexed unto the Hundred of *Webtree*, after the said Feast of *All-Saints*, shall be in no wise otherwise privileged, nor have no other Liberty, Franchises, nor Privilege but as Hundreds united and annexed to the said County of *Hereford*, and as other Hundreds be within the said County of *Hereford*.

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27 Henry VIII. c. 26.

XIII. And that the Lordships, Towns and Parishes of *Wollastone*, *Tidnam* and *Bechley*, in the said Marches of *Wales*, and all Honours, Lordships, Castles, Manors, Lands, Tenements and Hereditaments, lying or being between *Chepstow* Bridge in the said Marches of *Wales* and *Gloucestershire*, in whose Possession soever they be or shall be, and every Part thereof, shall stand and be guildable from and after the said Feast of *All Saints*, and shall be united, annexed and joined to and with

Towns in the Marches of Wales annexed to the County of Gloucester.

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the said County or Shire of *Gloucester*, as a Member, Part or Parcel of the same. And that the said Lordships, Towns and Parishes of *Wollastone, Tidnam* and *Bechley*, and all Honours, Lordships, Castles, Manors, Lands, Tenements and Hereditaments, lying or being between *Chepstow* Bridge and the Shire of *Gloucester* as is aforesaid, shall be united, joined, and knit to the Hundred of *Wesebery* within the said Shire of *Gloucester*, and shall be taken, named and known to be Part and Parcel of the same Hundred, and the Inhabitants thereof shall be attendant and do every Thing and Things with the Inhabitants of the said Hundred of *Wesebery*, as the Inhabitants of the same Hundred now do, according to the Laws of this Realm of *England*. And that the said Lordships of *Wollastone, Tidnam* and *Bechley* after the said Feast of *All-Saints* shall be in no wise privileged, nor have any other Liberty, Franchise, ne Privilege, but as Parcel of the said Hundred of *Wesebery* in the said County of *Gloucester*.

Towns annexed to the County of Glamorgan.

XIV. And that the Lordships, Towns, Parishes, Commotes, Hundreds and Cantreds of *Gowerkilvy, Bishops Town, Landaffe, Singhnithe supra, Singhnithe subtus, Maskin, Ogmore, Glynerotheney, Tallagarney, Ruthien, Tullavan, Lanblethyan, Lantwid, Tyeryal, Avan, Nethe, Landewey*, and the *Clays* in the said Country of *Wales*, and every of them, and all Honours, Lordships, Castles, Manors, Lands, Tenements and Hereditaments, lying or being within the Compass or Precinct of the said Lordships, Towns, Parishes, Commotes, Hundreds and Cantreds, or any of them, in whose Possession soever they be or shall be, and every Part thereof, shall stand and be guildable for ever from and after the said Feast of *All-Saints*, and shall be united, annexed and joined to and with the County of *Glamorgan*, as a Member, Part or Parcel of the same. And that the said Shire of *Glamorgan* and *Mordonnoke*, and all the aforesaid Lordships, Towns, Parishes, Commotes, Hundreds and Cantreds, united and annexed to the said County of *Glamorgan*, shall from and after the said Feast of *All-Saints*, be reputed, named, accepted and known by the Name and Shire of *Glamorgan* only, and by none other Name.

Glamorganshire.

XV. And that from and after the said Feast of *All-Saints*, Justice shall be ministred and executed to the King's Subjects and Inhabitants of the said County of *Glamorgan*, according to the Laws, Customs and Statutes of this Realm of *England*, and after no *Welsh* Laws, and in such Form and Fashion as Justice is ministred and used to the King's Subjects within the three Shires of *North Wales*.

Towns annexed to the County of Kayermarthen.

XVI. And that the Lordships, Towns, Parishes, Commotes, Hundreds and Cantreds of *Lanemthevery, Abermerlese, Kedwely, Eskenning, Cornewolthou, Newcastle, Emel, Abergoyly*, in the said Country of *Wales*, and every of them, and all Honours, Lordships, Castles, Manors, Lands, Tenements and Hereditaments, lying or being within the Compass or Precinct of the said Lordships, Towns, Parishes, Commotes, Hundreds and Cantreds, or any of them, in whose Possession soever they

be or shall be, and every Part thereof, shall stand and be guildable for ever, from and after the said Feast of *All-Saints*, and shall be united, annexed and joined to and with the County of *Kayermarthen*, as a Member, Part, or Parcel of the same; and that from and after the said Feast of *All-Saints*, Justice shall be be ministred and executed to the King's Subjects and Inhabitants of the said County of *Kayermarthen*, according to the Laws Customs, and Statutes of this Realm of *England*, and after, no *Welsh* Laws, and in such Form and Fashion as Justice is ministred and used to the King's Subjects within the three Shires of *North Wales*.

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XVII. And that the Lordships, Towns, Parishes, Commotes, Hundreds and Cantreds of *Haverfordwest*, *Kilgarran*, *Lansteffan*, *Langeharne*, otherwise called *Tallangherne*, *Walwynscastle*, *Dewysland*, *Lunnehadein*, *Lanfey*, *Herberth*, *Slebeche*, *Rosmarket*, *Castellan* and *Landofleure*, in the said Country of *Wales*, and every of them, and all Honours, Lordships, Castles, Manors, Lands, Tenements and Hereditaments, lying and being within the Compass or Precinct of the said Lordships, Towns, Parishes, Commotes, Hundreds and Cantreds, or any of them, in whose Possession soever they be or shall be, and every Part thereof, shall stand and be guildable for ever, from and after the said Feast of *All-Saints*, and shall be united, annexed and joined to and with the County of *Pembroke*; and that from and after the said Feast of *All Saints*, Justice shall be ministred and executed to the King's Subjects and Inhabitants of the said County of *Pembroke*, according to the Laws, Customs and Statutes of this Realm of *England*, and after no *Welsh* Laws, and in such Form and Fashion as Justice is ministred and used to the King's Subjects within the three Shires of *North Wales*.

Towns annexed to the County of Pembroke.

XVIII. And that the Lordships, Towns, Parishes, Commotes, Hundreds, and Cantreds of *Tregaron*, *Glenergine*, *Landway*, *Ureny*, in the said Country of *Wales*, and every of them, and all Honours, Lordships, Castles, Manors, Lands, Tenements and Hereditaments, lying or being within the Compass or Precinct of the said Lordships, Towns, Parishes, Commotes, Hundreds and Cantreds, or any of them, in whose Possession soever they be or shall be, and every Part thereof, shall stand and be guildable for ever, from and after the said Feast of *All-Saints*, and shall be united, annexed and joined to and with the County of *Cardigan*, as a Member, Part and Parcel of the same; and that from and after the said Feast of *All-Saints*, Justice shall be ministred and executed to the King's Subjects and Inhabitants of the said County of *Cardigan*, according to the Laws, Customs and Statutes of this Realm of *England*, and after no *Welsh* Laws, and in such Form and Fashion as Justice is ministred and used to the King's Subjects within the three Shires of *North Wales*.

Towns annexed to the County of Cardigan.

XIX. And that the Lordship, Town and Parish of *Mouthway*, in the said Country of *Wales*, in whose Possession soever it be, and all Lands, Tenements and Hereditaments now

Towns annexed to the County of Merioneth.

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lying or being within the Compass or Precinct of the said Lordship, Town and Parish of *Mouthway*, or any of them, in whose Possession soever they be or shall be, and every Part thereof, shall stand and be guildable for ever, from and after the said Feast of *All-Saints*, and shall be united, annexed and joined to and with the County of *Merioneth*, in *North Wales*, as a Commote, Member, Part or Parcel of the same.

Sessions Courts, Leets, &c. shall be kept in the English Tongue

XX. Also be it enacted by the Authority aforesaid, That all Justices, Commissioners, Sheriffs, Coroners, Escheators, Stewards, and their Lieutenants, and all other Officers and Ministers of the Law, shall proclaim and keep the Sessions Courts, Hundreds, Leets, Sheriffs Courts, and all other Courts in the *English* Tongue; and all Oaths of Officers, Juries and Inquests, and all other Affidavits, Verdicts and Wagers of Law, to be done and given in the *English* Tongue; and also that from henceforth no Person or Persons that use the *Welsh* Speech or Language, shall have or enjoy any manner Office or Fees within this Realm of *England*, *Wales*, or other the King's Dominion, upon Pain of forfeiting the same Offices or Fees, unless he or they use and exercise the *English* Speech or Language.

These Sheriffs shall put every misruled Person under common Mainprise.

XXI. And it is further enacted by the Authority aforesaid, That it shall be lawful to the Sheriff of every of the foresaid Shires of *Monmouth*, *Brecknock*, *Radnor*, *Mountgomery* and *Denbigh*, and every of them, to put every misruled and suspect Person within their Sheriffwick, under common Mainprise and Surety of their personal Appearance, as the Sheriffs do within every of the three Shires of *North Wales*, and that the Recognizances of such common Mainprise and Surety of Appearance taken before any of the said Sheriffs, shall be as good and effectual as if it were taken by any Justice of Record.

Certificate of Recognizance in Monmouth.

XXII. And that the Sheriff of the County of *Monmouth* shall certify such Recognizances, common Mainprise and Surety of Appearance, at every Quarter Sessions, before the Justices of the Peace of the said County of *Monmouth*; and that every Person or Persons within the said County of *Monmouth*, put under common Mainprise, and bound to his personal Appearance, shall keep their personal Appearance at the Sessions holden within the said Shire of *Monmouth*, next after the Clause of *Easter*, and at the Sessions to be holden within the said Shire next after the Feast of Saint *Michael* the Archangel, until such Time that they be thereof released after the Form of the Law.

Certificate of Recognizances.

XXIII. And that every of the Sheriffs of the said Counties of *Brecknock*, *Radnor*, *Mountgomery* and *Denbigh*, and every of them, shall certify such Recognizances, common Mainprise or Surety of Appearance by them taken, before such Justice as shall be appointed by our Sovereign Lord the King within every of the said Shires, at every Sessions to be holden in any of the said Shires before the same Justice.

Appearance of them which are bound.

XXIV. And that every Person and Persons within the said Counties of *Brecknock*, *Radnor*, *Mountgomery* and *Denbigh*, and also within the above-named Counties of *Glamorgan*,

*Kayermarthen, Pembroke* and *Cardigan*, or any of them, put under common Mainprise, and bound to his or their personal Appearance, as well by the aforesaid Sheriffs, as by the Justices of any of the said Counties, shall keep their Appearances before the said Justices at every Sessions within the said Counties to be holden, in such like Manner and Form as is used in the three Shires of *North Wales*.

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Lord Marcher shall have Half the Forfeiture of his Tenants.

'XXV. And for that the Lords Marchers before this present Parliament have used to put their Tenants within their 'Lordships Marchers under such common Mainprise and Surety 'of Appearance, and have had the Forfeitures thereof, which 'for ever from and after the said Feast of *All-Saints*, shall 'utterly cease and determine:' Therefore be it enacted by the Authority aforesaid, That after the said Feast of *All-Saints*, every lay and temporal Person now being a Lord Marcher, shall have the Moiety or Half of every Forfeiture of all and every common Mainprise, Recognizance for the Peace or Appearance, forfeited by any of their Tenants inhabiting within any of their Lordships Marchers; and they to be paid the same Moiety or Half by the Hands of the Sheriffs of every of the said Counties where such Forfeitures shall be, if the Sheriff can levy the same; and the same Sheriff to account to our Sovereign Lord the King for the other Half or Moiety in such Exchequer as they be bound to be accomptant.

Commissions to divide the Shires of Wales into Hundreds.

XXVI. Be it further enacted by the Authority aforesaid, That immediately upon the Prorogation or Dissolution of this present Parliament, the Lord Chancellor of *England* shall direct the King's Commission under his Grace's Great Seal, to such Persons as to him shall be thought convenient, to enquire and view all the said Shires of *Kayermarthen, Pembroke, Cardigan, Monmouth, Brecknock, Radnor, Mountgomery, Glamorgan* and *Denbigh*, and every Part and Parcel of them; and upon such View and Search, to divide them and every of them into so many Hundreds as they shall think most meet and convenient; and the Hundreds so divided shall return and certify with the said Commission into the High Court of Chancery before the said Feast of *All-Saints*, and the same to remain of Record, and to be of such Force and Effect as it were by Act of Parliament; and that the said Hundreds, after the said Certificate, shall be used and taken as other Hundreds be in every other Shire within this Realm of *England*.

Commissions to inquire into the Laws and Customs of Wales.

XXVII. Furthermore it is enacted by the Authority aforesaid, That immediately after the Prorogation or Dissolution of this present Parliament, the Lord Chancellor of *England* shall direct the King's Commission under his Grace's Great Seal to such Persons as to him shall be thought convenient, to enquire and search out, by all Ways and Means that they can, all and singular Laws, Usages and Customs used within the said Dominion and Country of *Wales*; and the same shall return and certify to the King's Highness, and his most honourable Council, before the said Feast of *All-Saints* next coming; and that upon deliberate Advice thereof had and taken, all such Laws,

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Usages and Customs as the King's Highness, and his said most honourable Council shall think expedient, requisite and necessary to be had, used and exercised in the before rehearsed Shires, or any of them, or in any other Shire of the Dominion or Country of *Wales*, shall stand and be of full Strength, Virtue and Effect, and shall be for ever inviolably observed, had, used and executed in the same Shires, as if this Act had never been had ne made; any Thing in the same Act contained to the contrary in any wise notwithstanding.

Two Knights for the Shire of Monmouth, and one Burgess for the Town.

XXVIII. And it is further enacted by the Authority aforesaid, That for this present Parliament, and all other Parliaments to be holden and kept for this Realm, two Knights shall be chosen and elected to the same Parliament for the Shire of *Monmouth*, and one Burgess for the Borough of *Monmouth*, in like Manner, Form and Order, as Knights and Burgesses of the Parliament be elected and chosen in all other Shires of this Realm of *England*, and that the same Knights and Burgesses shall have like Dignity, Pre-eminence and Privilege, and shall be allowed such Fees, as other Knights and Burgesses of the Parliament have been allowed; and the Knights Fees to be levied, perceived, received, gathered and paid in such Manner, Form and Order as such Fees be gathered, levied, perceived, received and paid in other Shires of this Realm of *England*; and the Burgesses Fees to be levied as well within the Borough of *Monmouth* as within all other ancient Boroughs within the said Shire of *Monmouth*.

Knights and Burgesses for the Parliament in Wales, and their Fees.

XXIX. And that for this present Parliament, and all other Parliaments to be holden and kept for this Realm, one Knight shall be chosen and elected to the same Parliaments for every of the Shires of *Brecknock*, *Radnor*, *Mountgomery* and *Denbigh*, and for every other Shire within the said Country or Dominion of *Wales*; and for every Borough being a Shire-town within the said Country or Dominion of *Wales*, except the Shire-town of the foresaid County of *Merioneth*, one Burgess; and the Election to be in like Manner, Form and Order, as Knights and Burgesses of the Parliament be elected and chosen in other Shires of this Realm; and that the Knights and Burgesses, and every of them, shall have like Dignity, Pre-eminence and Privilege, and shall be allowed such Fees, as other Knights of the Parliament have and be allowed; and the Knights Fees to be levied and gathered of the Commons of the Shire that they be elected in; and the Burgesses Fees to be levied and gathered as well of the Boroughs and Shire-towns as they be Burgesses of, as of all other ancient Boroughs within the same Shires.

Lords Marchers shall keep their Liberties.

XXX. And it is further enacted by the Authority aforesaid, That all and every lay and temporal Person and Persons, now being Lords Marchers, and having any Lordships Marchers or Lordships Royal, shall from and after the said Feast of *All-Saints* have all such Myses and Profits of their Tenants as they have had or used to have at their first Entry into their Lands in Times past, and also shall have, hold and keep

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within the Precinct of their Lordships, Courts Baron, Courts Leet and Law-days, and all and every Thing to the same Courts belonging; and also shall have, within the Precinct of the said Lordships or Law-day, Waife, Straife, Infanthef, Outfanthef, Treasuretrove, Deodands, Goods and Chattels of Felons, and of Persons condemned or outlawed of Felony or Murther, or put in *Exigent* for Felony or Murther, and also Wreck *de Mer*, Wharfage and Customs of Strangers, as they have had in Times past, and as though such Privileges were granted unto them by our Sovereign Lord the King by Point of Charter: any Thing in this present Act to the contrary notwithstanding.

Customs of North Wales and County Palatine of Lancaster saved.

XXXI. Provided alway, That this present Act, nor any Thing therein contained, shall take away or derogate any Laws, Usages, or laudable Customs now used within the three Shires of *North Wales*; nor shall not deprive nor take away the whole Liberties of the Duchy of *Lancaster*, but that the said Liberties shall continue and be used in every Lordship, Parcel of the said Duchy, within the Dominion and Country of *Wales*, as the Liberties of the said Duchy be used in Shire Ground, and not County Palatine, within this Realm of *England*.

Reservation of Patents.

XXXII. Provided also, That this Act, nor any Thing therein contained, do not extend nor be prejudicial to any Person or Persons, to avoid any Patent, joint Patent of any Office Fees or Annuities, or Reversion of any Office Fees or Annuities to them granted for Term of their Life or Lives, by our Sovereign Lord the King, or by any other Person or Persons, either for the using, exercising or occupying any Manner of Office or otherwise; but that they shall have and enjoy their said Fees, and all other Offices or Constableships, Porterships, Stewardships of Leets, Law-days, Court Barons and other Offices, being not repugnant against this Act; and in case any such Offices be repugnant against this Act, that then the Grantees to have and enjoy their Fees during their Life or Lives; any Article or Clause in this present Act to the contrary in any wise notwithstanding.

Earl of Worcester Justice of Glamorgan.

XXXIII. Provided also, That this Act, nor any Thing therein contained, be not in any wise prejudicial to the Right Honourable *Henry* Earl of *Worcester*, for the exercising, using and occupying the Office of the Justice of the whole County of *Glamorgan*; any Thing in this present Act contained to the contrary in any wise notwithstanding.

26 H. 8. c. 6.

XXXIV. Provided also, That this Act, nor any Thing therein contained, extend not to deprive, take away or derogate any other Acts before this Time made for the Trial of Treason, Murther or Felonies, or Accessaries of the same, committed and done in any Lordship Marcher in *Wales*, in the next Shires of *England* adjoining to the said Lordship Marcher.

Lands partable.

XXXV. Provided alway, That Lands, Tenements and Hereditaments lying in the said Country and Dominion of *Wales*, which have been used Time out of Mind, by the laudable Customs of the said Country, to be departed and de-

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partable among Issues and Heirs Males, shall still so continue and be used in like Form, Fashion and Condition, as if this Act had never been had nor made; any Thing in this Act to the contrary thereof notwithstanding.

The King may suspend or revoke this Statute.

XXXVI. Provided also, and be it enacted by the Authority aforesaid, That the King's Highness, notwithstanding this Act, or any Thing therein contained, shall have Power and Authority for the Term of three Years next after the End and Dissolution of this present Parliament, to suspend for such Time as shall please his Grace, or utterly to repeal, revoke and abrogate, this whole Act or any Part thereof, from Time to Time, as shall stand with his most gracious Pleasure, so that every such Suspending, Repeal and Revocation from Time to Time, as often as any such Case shall happen, shall be made in Writing under the Great Seal of *England*, and be annexed to the Roll of this present Parliament wherein this Act shall be inrolled, and Proclamations thereupon to be made in every Shire within the said Country and Dominion of *Wales*; and that every such Suspending, Repeal and Revocation, so to be had and made by the King's Highness, shall be as good and effectual to all Intents and Purposes, as if the same had been done by Authority of this present Parliament; this Act, or any Thing therein contained to the contrary thereof notwithstanding.

The King may erect in Wales so many Courts and Justices, &c. as he will.

XXXVII. 'And whereas by this present Act there is appointed one Chancery and one Exchequer at *Brecknock*, and another Chancery and Exchequer at *Denbigh*,' it is enacted by Authority aforesaid, That the King's Highness, from Time to Time, within the Term of five Years next after the End of this Parliament, for the due Ministration of Justice in the said Country of *Wales*, shall have Power and Authority to erect, make and ordain such Court or Courts and so many Courts of Record, and such and so many Justices, Ministers, Officers and Clerks, as by his Highness within the Time of Five Years next after the End of this present Parliament shall be thought sufficient and convenient, as well for the due Execution of this Act, or of any Thing or Things that shall be had done or made by Authority of the same, as for the good Governance and Rule of the said Country of *Wales*.

The Office of Prothonotary and Clerk of the Crown.

XXXVIII. Provided alway, That this Act, or any Thing or Things to be done by Authority thereof, shall not be prejudicial to any Person or Persons, which now have by the King's Letters Patents any Office or Offices of Prothonotary or Clerk of the Crown in the said Country or Dominion of *Wales*; but that they and every of them shall and may still have and use their Offices in as large and ample Manner, Form, Fashion and Condition, as if this Act, nor any Thing to be done by Authority thereof, had never been had or made; any Thing in this Act to the contrary thereof notwithstanding.

Lord Ferrer's Office in Wales reserved.

XXXIX. Provided also, That this Act, or any Thing therein contained, extend not, or in any wise be prejudicial or hurtful to Sir *Walter Devereux*, Knight of the noble Order

of the Garter, and Lord *Ferrers* of *Chartley*, of for and concerning the Offices of Chief Justice of *South Wales*, the Office of Chamberlain of *South Wales*, and of the Counties of *Carmarden*, and *Cardigan* in *South Wales* aforesaid, and of and for the Office of the Stewardship of the Lordship of *Bealth*, in the Marches of *South Wales*, and of and for the Office of Receivership of the said Lordship of *Bealth*, or of, for or concerning any of the said Offices; but that the said Lord *Ferrers* may have, use, exercise and enjoy the said Offices, and every of them, with all Fees, Wages, Emoluments, Commodities and Profits to the same Offices, or to any of them in any wise belonging or appertaining, in as large and ample Manner, Form and Condition, as if the said Act had never been had or made. No. 26. 27 Henry VIII. c. 26.

## No. 27.

Henry VIII. c. 13.—Lordships in *Wales* removed from the County of *Denbigh* to the County of *Flint*, &c. When and where the Shire Court of *Chester* shall be kept. There shall be two Coroners chosen for the County of *Chester*. When the Sessions for the County of *Chester* shall be holden. Certain Lordships and Parishes in *Wales* annexed to the County of *Flint*. Certain Towns in the County of *Flint* in *Wales* assigned to be within the Hundreds of *Molesdale* and *Rutland*.

## No. 28.

34 and 35 Henry VIII. c. 26.—An Act for certain Ordinances in the King's Dominion and Principality of *Wales*.*

No. 28. 34 & 35 Henry VIII. c. 26.

Laws specially shall be made in Wales by the Officers there.

OUR Sovereign Lord the King's Majesty, of his tender Zeal and Affection that he beareth towards his loving and obedient Subjects of his Dominion, Principality and Country of *Wales*, for good Rule and Order to be from henceforth kept and maintained within the same, whereby his said Subjects may grow and arise to more Wealth and Prosperity, hath devised and made divers sundry good and necessary

* Mr. Barrington observes on this Act, that it "contains a most complete Code of Regulations for the Administration of Justice, with such Precision and Accuracy, that no one Clause of it hath ever yet occasioned a Doubt or required an Explanation." He adds, that "though the Calendar of the Lords' Journals begins with the first Year of this Reign, he cannot find any Thing relative to this most excellent Law; and that therefore the Inhabitants of the Principality must for ever remain ignorant of the Name of their greatest Patriot and Benefactor." — It will be seen by Note to Sec. 4, that the Remark as to the Statute never having required an Explanation is not perfectly correct.

No. 28. 34 & 35 Henry VIII. c. 26. Ordinances, which his Majesty of his most abundant Goodness, at the humble Suit and Petition of his said Subjects of *Wales*, is pleased and contented to be enacted by the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, in Manner and Form as hereafter ensueth.

Wales divided into twelve Shires.

II. First, That his Grace's said Dominion, Principality and Country of *Wales* be from henceforth divided into twelve Shires; of the which eight have been Shires of long and ancient Time, that is to say, the Shires of *Glamorgan, Caermarthen, Pembroke, Cardigan, Flint, Caernarvon, Anglesey* and *Merioneth*; and four of the said twelve Shires be newly made and ordained to be Shires, by an Act made at the Parliament holden at *Westminster* in the twenty-seventh Year of our said Sovereign Lord's most noble Reign, that is to say, the Shires of *Radnor, Brecknock, Montgomery* and *Denbigh*; over and besides the Shire of *Monmouth*, and divers other Dominions, Lordships and Manors in the Marches of *Wales*, united and annexed to the Shires of *Salop, Hereford* and *Gloucester*, as by the said late Act more plainly appeareth.

Limitation of Hundreds by Commission.

III. *Item*, That the Limitations of the Hundreds, of late made within the said Shires by Virtue of his Grace's Commissions directed out of his Highness Court of Chancery, and again returned into the same, shall stand in full Strength, Force and Effect, according to the said Limitation; except such of the same as sith that Time hath been altered or changed by Virtue of any Act or Acts of Parliament already made, or that shall be altered or changed by any Act or Acts in this present Session to be made.

President and Council.

IV. *Item*, That there shall be and remain a President and Council in the said Dominion and Principality of *Wales*, and the Marches (1.) of the same, with all Officers, Clerks and Incidents to the same, in Manner and Form as hath been heretofore used and accustomed; which President and Council shall have Power and Authority to hear and determine, by their Wisdoms and Discretions, such Causes and Matters as be or hereafter shall be assigned to them by the King's Majesty, as heretofore hath been accustomed and used.

Sessions of Wales twice in a Year.

V. *Item*, That there shall be holden and kept Sessions twice in every Year, in every of the said Shires in the said Dominion and Principality of *Wales*, that is to say, in the Shires of *Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, Cardigan, Montgomery, Denbigh, Flint, Caernarvon,*

(1.) See the Pieces on the Jurisdiction of the Marches in Bacon's Law Tracts. It was contended by Bacon, as Solicitor-General, that the Term *Marches* in this Section extended to the Counties of Hereford, Worcester, Salop and Gloucester. The contrary was maintained by Serjeants Hulton and Harris. It appears by 2 Inst. p. 242, that it was held by all the Judges that those Counties were not within the Jurisdiction of the President and Council of the Marches. The Question has become immaterial by the Abolition of that Court; but the Argument of Bacon deserves Attention, as containing some very judicious Principles respecting the general Exposition of Statutes.

*Merioneth* and *Anglesey*; the which Sessions shall be called the King's great Sessions in *Wales*. No. 28. 34 & 35 Henry VIII. c. 25.

VI. *Item*, That the Justice of *Chester* for the Time being shall hold and keep Sessions twice in every Year, in the Shires of *Denbigh, Flint* and *Montgomery*, and have nothing but his old Fee of an hundred Pounds yearly for the same. Justice of Chester.

VII. *Item*, That the Justices of *North Wales* shall in likewise hold and keep Sessions twice every Year, in every of the said Shires of *Caernarvon, Merioneth* and *Anglesey*, and shall have yearly of the King's Majesty a yearly Fee of fifty Pounds for the same. Justice of North Wales.

VIII. *Item*, That one Person learned in the Laws of this Realm of *England*, by the King's Majesty to be named and appointed, shall be Justice of the Shires of *Radnor, Brecknock*, and *Glamorgan*, and shall in likewise hold and keep Sessions twice in every Year in every of the same Shires, and shall have yearly of the King's Majesty fifty Pounds for his Fee. Justice of Radnor, &c.

IX. *Item*, That one other Person learned in the Laws of this Realm, to be appointed as is aforesaid, shall be Justice of the Shires of *Caermarthen, Pembroke* and *Cardigan*, and shall in likewise hold and keep Sessions twice in every Year, in every of the same Shires, and shall also have yearly of the King's Majesty fifty Pounds for his Fee. Justice of Caermarthen.

X. *Item*, The said Persons or Justices, and every of them now being, or that hereafter shall be, shall have several Letters Patents and Commissions for their Offices, under the King's Seal of *England*, to be exercised by themselves or their sufficient Deputies, according to the Purposes and Intents in these Ordinances specified. Patents under the Great Seal.

XI. Provided always, That their Commissions to them already granted under the said Great Seal, shall stand in Force and Effect according to the Tenor of the same, unless it shall please the King's Majesty hereafter to alter or change them or any of them; this present Article last before expressed in any wise notwithstanding. Commissions already granted to stand in force

XII. *Item*, That every of the said Justices, within the Limits of their Commissions and Authorities to them appointed as is aforesaid, shall hold all manner of Pleas of the Crown at and in the said Sessions, in as large and ample manner as the King's Chief Justice in *England*, and other the King's Justices of the King's Bench there, or any of them, may do in their Places, or elsewhere within the Realm of *England*; and also to hold Pleas of Assises, and all other Pleas and Actions real, personal and mixt, in as large and ample manner as the King's Chief Justice of the Common-place in *England*, and other Justices of the same Place, or any of them, may do in the Realm of *England*. Of what Things the Justices in Wales may hold Plea.

XIII. *Item*, That every of the said Justices of *Wales* shall have Power and Authority to enquire of all Treasons, Murders, Felonies, Riots, Routs, unlawful Assemblies, Extortions, Embraceries, Maintenances, Retainers, Concealments, Contempts, and all other Offences and Evil Deeds, of what Natures,

No. 28. 34 & 35 Henry VIII. c. 26

Names or Qualities soever they be, done, committed or perpetrated within the Limits of their Commissions and Authorities, against the Form of the Common Law of the Realm of *England*, or of any Statutes of the same, and to hear and determine the Premisses, and every of them, and generally to minister common Justice to all and singular the King's Subjects within the Limits of their Commissions and Authorities, according to the Laws, Statutes and Customs of the Realm of *England*, and according to this present Ordinance.

Sessions shall endure six Days.

XIV. *Item*, That every of the said Sessions shall be kept and continued by the Space of six Days in every of the said Shires at either of the said Times, as is or hath been used within the said three Shires of *North Wales*; and that the said Justices shall cause open Proclamations to be made in the Shire-towns what Time and Place they purpose to keep their said Sessions, fifteen Days at the least before they keep the same, to the Intent the King's Subjects may have Knowledge thereof.

Days in Court.

XV. *Item*, That Days shall be given in all Pleas, Plaints, Process and Adjournments, from Day to Day and Sessions to Sessions, by the Discretion of the said Justices within the Limits of their Authorities, for the good and speedy Ministration of Justice to all and singular the King's Subjects, as is or hath been used in *North Wales*.

Original Seals in whose Custody they shall be.

XVI. *Item*, That one original Seal, devised by the King's Highness for Justice to be ministred in the said three Shires of *North Wales*, that is to say, the Shires of *Merioneth*, *Caernarvon*, and *Anglesey*, shall be and remain in the Charge, Keeping and Custody of the Chamberlain of *North Wales*.

XVII. And that one other original Seal, devised by the King's Majesty for Ministration of Justice, to be used in the said three Shires of *Caermarthen*, *Pembroke* and *Cardigan*, shall be and remain in the Charge and Keeping of the Chamberlain of *South Wales*.

XVIII. And that likewise one other original Seal, devised by the King's Majesty, for Administration of Justice, to be used in the said three Shires of *Brecknock*, *Radnor*, and *Glamorgan*, shall be and remain in the Charge and Custody of the Steward and Chamberlain of *Brecknock*.

XIX. And that also one other original Seal, devised by the King's Majesty for Ministration of Justice, to be ministred within the said Shires of *Denbigh* and *Montgomery*, shall be and remain in the Charge, Keeping and Custody of the Steward and Chamberlain of *Denbigh*.

XX. And that the original Seal of *Chester* shall be and stand for the original Seal of *Flint*, for Justice to be ministred in the said Shire of *Flint*, and shall be and remain in the Charge, Keeping and Custody of the Chamberlain of *Chester*.

What shall be sealed with the original Seals.

XXI. *Item*, That the said Stewards and Chamberlains shall seal with the said Seals, that is to say, every one of them shall seal with the Seal to his Charge committed, all manner of original Writs and Process, returnable before the said Justices

at the Sessions to be holden in every of the said Shires, in Manner and Form as is aforesaid, and shall severally account and answer the King's Majesty for the Profits of the same Seal: And that none of the said Stewards, Chamberlains or Chancellors, having the Charge and Keeping of the said Seals, shall by Occasion thereof, or by Colour of any of their Offices, compel or cause any Person or Persons inhabiting within any of the said twelve Shires, to appear before themselves or their Deputies, ne shall have Power and Authority to hear and determine any Pleas of the Crown, nor other Causes or Matters of Justice, otherwise than in this Ordinance is limited and expressed; but shall have the Charge and Keeping of the said Seals, to seal all such original Writs and Process as shall be returnable before the said Justices in their said Sessions, as is before specified, and as hereafter shall be declared; which Writs and Process shall be used, made, sealed and returned, in Manner and Form as hath been used before the Justice of *North Wales*.

No. 28. 34 & 35 Henry VIII c. 26.

The Authority of the Keepers of the Seals, and to what only Purposes they shall use them.

XXII. *Item*, That all such Persons as now be or hereafter shall be the King's Highness Stewards, Chamberlains or Chancellors, within any of the said twelve Shires, which by reason of their said Offices have Charges for the Receipt, Collection or Accompt, of and for the King's Rents, Revenues, Farms, or Profits, to be due to his Majesty within the said Dominion of *Wales*, may direct Process under the said Seal, being in their Charge and Custody, within the Limits of their Authorities, only against Bailiffs, Reeves, Farmers, and other Ministers Accomptant, to appear before themselves, to answer to and for any the King's Revenues, Farms, Rents or Profits, and for none other Causes, nor against any other Person or Persons, in like Manner and Form as they have been accustomed in that Case to do.

The Keeper of the Seals may award Process against Accomptants, returnable before themselves.

XXIII. *Item*, That all Stewards of any Lordships or Manors in *Wales* shall and may keep and hold such Leets, Lawdays or Court Barons, as appertaineth and belongeth to the Lordships and Manors whereof they be Stewards, and hold Pleas by Plaint under the Sum of *xl. s.* in every such Court Baron, and have and enjoy all other Authorities, Commodities and Profits as Stewards of Leets, Lawdays and Court Barons in *England* commonly have and been used to have by reason of the said Offices, and none other; any Law, Usage, or Custom in the said Dominion of *Wales* heretofore had to the contrary hereof notwithstanding.

Stewards of Manors may hold Courts and Leets.

XXIV. *Item*, Provided always, and be it enacted, That the said Stewards, nor any of them, nor the Sheriff of the said Counties in *Wales*, shall have any Power or Authority to enquire of any manner of Felony in any such Leet, Lawday or Torn, within the said Dominion to be holden.

Stewards or Sheriffs shall not enquire of Felony.

XXV. And that from henceforth no Leet nor Lawday be kept by the Steward or other Officer of any Lordship or Manor in the said Dominion of *Wales*, but in such Lordships and Places where it was accustomed to be kept before the making

26 H. 8. c. 6.

No. 28.
34 & 35 Henry VIII. c. 26.

of the Act of Parliament concerning *Wales*, made in the twenty-sixth Year of our said Sovereign Lord's Reign; so always the Place where such Court shall be kept, be meet and convenient for that Purpose.

Officers of Corporate Towns may hold Pleas and determine Actions.

XXVI. *Item*, That all Mayors, Bailiffs and Head Officers of Corporate Towns in *Wales*, may hold Pleas and determine Actions, and do every other Thing concerning common Justice, according to their lawful Grants and laudable Customs of such Towns; so always they follow the Course, Trade and Fashion of the Laws and Customs of the Realm of *England*, and not of any *Welsh* Laws or Customs. And that in every of the said Towns they may try all Issues joined, or hereafter to be joined, in any Action personal, by six Men, according as heretofore in divers Places in the said Country it hath been used; any Thing contained in this Act to the contrary notwithstanding.

The King may dissolve Boroughs and erect others by his Letters Patents.

XXVII. Provided always, and be it enacted by the Authority aforesaid, That forasmuch as there be divers and many small Boroughs and Towns Corporate within the said Dominion of *Wales*, whereof many have their Commencement by Grants made from the Lords Marchers, and some by other Means, our said Sovereign Lord shall from henceforth, by virtue of this Act, have full Power and Authority, by his Letters Patents, to be inrolled in his Grace's High Court of Chancery, at any Time within seven Years hereafter next ensuing to the End of this present Parliament, to repel, annihilate and dissolve such and as many of the said Boroughs and Towns Corporate, and all Liberties and Customs of the same, as to his Highness shall be thought expedient, to the Intent his Majesty, at his Grace's Pleasure, may duly erect, ordain and make such and as many other Boroughs and Towns Corporate within the said Dominion, being more apt and convenient for that Purpose, and endue them with such Liberties and Franchises, as to his most excellent Wisdom shall be thought necessary for the Wealth of the said Country.

Officers certain Fees shall continue, but not their casual Fees.

XXVIII. *Item*, The King's Majesty is pleased and contented of his most gracious Goodness, that such as have Patents of any Office of Stewardships, Chamberlainships, Chancellorships or Justiceships, within the said Dominion of *Wales*, for Term of their Lives, shall have and enjoy their certain, ordinary and annual Fees of Money, used and accustomed to be paid and born by the King's Highness, by Virtue of any their Letters Patents, during their Interest therein, but in no wise to take or claim any casual Fees claimed by colour of their Offices, contrary to this present Ordinance; any Custom in *Wales*, or any Thing in this Act to the contrary notwithstanding.

There shall be four judicial Seals, in whose Custody they shall be, and what shall be sealed with them.

XXIX. *Item*, Over and besides the said original Seals, there shall be four judicial Seals devised by the King's Majesty, whereof one shall remain with the Justice of *Chester*, which is appointed by this Act to be Justice of the Shires of *Flint, Denbigh* and *Montgomery*, to be used within the said Shires, to seal all judi-

cial Process and Bills that shall be sued before the said Justice, in the Sessions to be holden within the same Shires: And that one other of the said judicial Seals shall likewise remain and be in the Charge and Custody of the said Justice of *North Wales:* And that the third of the said Seals shall be and remain in the Custody and Charge of the Justice of the three Shires of *Glamorgan, Brecknock* and *Radnor:* And the fourth of the said Seals shall remain in the Charge and Custody of the Justice of the said three Shires of *Pembroke, Caermarthen* and *Cardigan:* And the said Justices shall seal with the said judicial Seals, that is to say, every of them with the Seal committed to his Charge and Custody, as well all Bills, as all other judicial Process, that shall be sued before them in the said Sessions, upon any original Bills or Writs; and all other Process that shall be awarded from any of the said Justices shall be sealed with the said judicial Seal.

No. 28. 34 & 35 Henry VIII. c. 26.

XXX. *Item,* That every the said Justices shall account and answer to the King's Majesty for the Profits of the said Seal being in his Charge and Custody, in Manner and Form as hereafter shall be declared.

Account for the Profit of the Seal.

XXXI. *Item,* That the *Teste* of every Bill and judicial Process that shall pass under the said judicial Seal, shall be under the Name of such of the said Justices from whom such Bill or judicial Process shall pass, in like Manner and Form as is used in the Common Place in *England.*

Teste of every Process.

XXXII. *Item,* That all Actions real and mixt, Attaints, Conspiracies, Assises and *Quare impedit,* Appeals of Murder and Felony, and all Actions grounded upon any Statutes, shall be sued by original Writs, to be obtained and sealed with the said original Seal, returnable before the said Justices at their Sessions, within the Limits of their Authorities, in Manner and Form as is aforementioned.

What Process shall be sealed with the original Seal.

XXXIII. *Item,* That all manner of personal Actions, as Debt, Detinue, Trespass, Accompt and such like, amounting to the Sum of *xl. s.* or above, shall be sued by Writs original, to be obtained and sealed as is aforesaid, or by Bills, at the Pleasure of the Party suing the same, before the said Justices within the Limits of their Authorities, as is used in *North Wales.*

Personal Actions of xl. s. or above.

XXXIV. And that all personal Actions under the Sum of *xl. s.* that is to say, Debt, Trespass, Detinue, Accompt and such like, shall and may be sued before any of the said Justices in the said Sessions, by Bill, as it is used in *North Wales.*

Personal Actions under xl. s.

XXXV. And that every original Bill concerning Actions personal, shall be sealed with the King's judicial Seal, being in the Custody of the said Justice before whom such personal Actions by Bill shall be brought and commenced.

Original Bill concerning Actions personal.

XXXVI. And that such Fees shall be paid for the writing and sealing of such original Writs and Bills as hereafter shall be expressed, that is to say, For the sealing of every original Writ to be sued in and upon the Causes aforesaid, and for every Bill to be pursued in Actions personal, whereof the Debt and

Fees for writing and sealing of Writs and Bills.

No. 28. 34 & 35 Henry VIII. c. 26.

Damage amounteth to the Sum of *xl. s.* or above, the Parties pursuing the same shall pay for the Seal of every such Writ or Bill, *vi. d.* And for every judicial Process to be sued upon any such original Writ or Bill, the Parties pursuing such judicial Process shall pay for the sealing thereof *vii. d.* whereof the King's Majesty shall have *vi. d.* and the Justice sealing such judicial Process shall have *i. d.*

Debt or Damage not amounting to xl. s.

XXXVII. *Item,* That every Bill in personal Action, whereof the Debt, Duty or Damage amounteth not to *xl. s.* and all manner judical Process to be sued upon the same, shall also be sealed with the King's said judicial Seal; and the Parties pursuing the same shall pay for the Seal of every such Bill and judicial Process thereupon to be sued, *iij. d* whereof the King's Majesty to have *ii. d.* and the Justice sealing such Process to have *i. d.*

Process sealed with the judicial Seal, and the Fees.

XXXVIII. *Item,* That all Writs of *Scire facias,* and Writs of good Abearing, or for the Peace, or Writs of *Supersedeas* upon the same, and all other Process to be sued from the said Justices, upon any Record or Suggestion admitted by any of the said Justices within the Limits of their Authorities, shall also be sealed with the said judicial Seal; and that the Parties pursuing the same, shall pay for the Seal of every such Writ and Process *vij. d.* whereof the King's Highness shall have *vj. d.* and the Justice by whom such Process shall be sealed *i. d.*

XXXIX. And that every Exemplification upon any Record before any of the said Justices, shall be sealed with the King's said judicial Seal; and the Parties pursuing the same shall pay for the Seal thereof *xx. d.* whereof the King's Highness shall have *xvi. d.* and the Justices sealing the same *iv. d.*

Recoveries, Fines, Concords, &c. taken before the Justices.

XL. *Item,* That Recoveries and Fines of Record, and Warrants of Attorney for the same, shall and may be taken before every of the said Justices, of Lands, Tenements and Hereditaments within his Authority, by Force of his general Commission, without any Writ of *Dedimus potestatem* to be sued for the same, in like Manner and Form as is used to be taken before the King's Chief Justice of his Common Place in *England.*

Of what Force Fines levied before the Justices shall be.

XLI. *Item,* That all Fines hereafter to be levied before any of the said Justices, with Proclamation made the same Sessions that the said Fine shall be engrossed, and in two other great Sessions then next to be holden within the same County, shall be of the same Force and Strength to all Purposes, as Fines levied with Proclamations be of, that be levied before the Justices of the Common Place in *England.*

Fines to the King upon Recoveries or Fines.

XLII. *Item,* That every Person suing Writs of Entry in the *Post,* or Writs of Covenant, or any other Writs, for any Recovery to be had by Assent of Parties, or otherwise, or for any Fine to be levied, shall pay such Fines to the King's Use for the same, as well Fines *pro licentia concordandi,* as all other Manner of Fines, as is used in the King's Chancery, or elsewhere in any of the King's Courts of *England,* which

Fines shall be paid to such Persons as shall seal the original Writs for that Purpose, and they shall account for the same in like Form as they shall do for the Profits of the said original Seal, as is aforesaid. No. 28. 34 & 35 Henry VIII. c. 26.

XLIII. *Item,* That the King's Silver upon every Fine to be levied, shall be paid as is used in the Common Place of *England,* that is to say, *ij. s.* which King's Silver shall be paid to the Justice afore whom such Fine shall be levied; whereof the King's Highness shall have *xx. d.* and the Prenotary entring the same shall have *ij. d.* and the Justice afore whom such Fine shall be levied other *ij. d.* and that the same Justice shall account for the King's Part thereof, like as he shall for the Profits of the King's judicial Seal committed to his Charge, in Manner and Form as is aforesaid. King's Silver.

XLIV. *Item,* There shall be four Prenotaries for the making of all judicial Process, and for the Entring of all Pleas, Process, and Matters of Record, in the Sessions to be holden before the said Justices, whereof one of the said Prenotaries shall attend upon the said Justice appointed for the three Shires of *North Wales,* and one other shall attend upon the Justice assigned for the three Shires of *Flint, Denbigh,* and *Montgomery;* and the third shall attend upon the Justice assigned for the three Shires of *Caermarthen, Cardigan,* and *Pembroke;* and the fourth of the said Prenotaries shall attend upon the Justice assigned for the three Shires of *Glamorgan, Brecknock,* and *Radnor:* And these four Prenotaries, as often as their said Offices shall be void, shall be named and appointed by the King's Highness, by his Majesty's Letters Patents under his great Seal of *England.* And where one *John Arnold,* Gentleman, hath the Office of Prenotary and Clerkship of the Crown, by the King's Highness Letters Patents, within the said three Shires of *North Wales;* and that one *John Breckenhead* hath the Office of the Prenotary, and Clerkship of the Crown by the King's Letters Patents, within the said Shire of *Flint;* and that likewise one *John Leonard* hath the Office of the Prenotary and Clerkship of the Crown, by the King's Letters Patents, within all the Residue of the said Dominion of *Wales;* the King's Majesty is pleased and contented, that the said three Prenotaries shall have, use, and enjoy their said Offices according to the Effect of the said Letters Patents to them thereof made, doing their Duties and Attendance by themselves or their sufficient Deputies, at every of the said Sessions to be kept within the Shires whereunto they be so appointed. There shall be four Prenotaries, and upon whom they shall attend.

XLV. *Item,* There shall be a Marshal and a Crier in every of the said Circuits and Limits allotted to the said Justices, which shall be named by the said Justices within the Limits of their Authority and Commission, in like Manner and Form as Justices of Assise do in *England:* And the said Officers shall attend upon the said Justices in their Circuits in their own proper Persons, and not by their Deputies. A Marshal and a Crier, and their Fees.

No. 28. 34 & 35 Henry VIII. c. 26.

XLVI. And that the Marshal have, upon every Judgment and every Fine, *iv. d.* and the Crier *i. d.* And upon the Acquittals of Felons, and of them that shall be delivered by Proclamation, or delivered out of common Mainprise before any of the said Justices, the Marshal shall have *iv. d.* and the Crier *i. d.*

The Prenotaries Fees.

XLVII. *Item,* That every of the said Prenotaries, within the Limits of their Offices, shall take such Fees as hereafter shall be expressed; that is to say, For the writing of Pleas, and engrossing of Writs of Entry, in the *Post,* Writs of Right, *Quod ei deforceat,* or any other Writs pursued by the Assent of the Parties, *v. s.* and if it be with a double Voucher, then *vi. s. viij. d.* and for the Exemplification thereof *ij. s.* and for the engrossing of Fines, to have for every Fine *iij. s. iv. d.* and if it be with Proclamations, then *iv. s.*

Bills of Debt, Detinue, Trespass, &c.

XLVIII. *Item,* For every Bill of Debt, Detinue, Trespass, and all other Actions Personal sued before the said Justices in their Circuits, under the Sum of *xl. s.* the Prenotaries shall have for the first Bill *iv. d.* for the second Bill *iv. d.* and for the third Bill *iv. d.* and for the Entry of every Declaration Plea and Bar, Replication, and Rejoinder in and upon every such Action, so that he do inrol the same in Parchment, *iv. d.* and for every *Venire fac,' Tales, Habeas Corpora,* and *Distring',* for every of them *iv. d.* and for the Judgment *viij. d.* and for every Writ of Execution in every such Action *vj. d.* and for every Warrant of Attorney in every such Action, as well for the Plaintiffs as for the Defendants, *iv. d.*

XLIX. *Item,* In all Actions of Detinue, Trespass, and all other Actions Personal, wherein the Duty, Debt, or Damage amounteth to the Sum of *xl. s.* or above, which shall be sued by Bills before the said Justices, the Prenotary shall have for the first Bill, *iv. d.* for the second Bill *iv. d.* and for the third *iv. d.* and for every of the Declaration, the Answer, Replication and Rejoinder, if it be enrolled in Parchment, *viij. d.* and for the *Venire fac', Tales, Habeas Corpora, Distring',* for every of them *vi. d.* and for the Judgment *viij. d.* and for the Warrant of Attorney, *iv. d,* and for every Writ of Execution upon the Judgments in such Bills *vj. d.*

Original Writs upon Actions personal.

L. *Item,* In original Writs sued upon every Action Personal returnable before the said Justices, the Prenotaries shall have for every *Iterum sum',* *vi. d.* for every Distress in Trespass, *vj. d.* and for the Declaration *viij. d.* for the Answer, Replication and Rejoinder, for every of them, if they be inrolled as is aforesaid, *xij. d.* For the *Venire fac', Tales, Habeas corpora* and *Distring',* for every of them *vj. d.* and the Prenotaries to have for the Entry of the Judgments in every such Action *xij. d* and for every Writ of Execution sued upon the same *vj. d.* for the Exemplification of every Record in any of the said Actions, *ij. s.* for every Warrant of Attorney, *iv. d.* In all Actions real and mixt, Assises, *Quare Impedit,* Appeals of Felony, Murder or Maim, the Prenotary to have for the Declaration or Plaint, *ij. s.* and for the Plea in

Bar, Replication, Rejoinder, Surrejoynder, for every of them, if they be inrolled as is aforesaid, *i. s.* and for the writing of every *Venire fac'*, *Tales*, *Habeas corp'*, and *Distring'* upon the same, for every of them *vj. d.* and for the Entry of the Judgment, in every of the said Actions and Appeals, *ij. s.* and for the writing the Writs of Execution made upon every of the said Actions, Appeals and Assises, *i. s.* And for Writs of *grand Cape* and *petit Cape*, and Writs of View, Writs upon Voucher, and all other Writs in every such Action or Actions, *xij. d.* and for every Warrant of Attorney for the Defendants, or for the Demandants or Plaintiffs, in every such Action Real, Assise, Appeal and *Quare Impedit*, *iv. d.* and for the Essoins in every such Action *iv. d.* and for the Adjournment *ij. d.* and for the Bail of every Person of Felony *xij. d.* and for the Bail for Trespass *vj. d.* and for the Appearance and Bailing of common Mainprise *ij. d.* No. 28. 34 & 35 Henry VIII. c. 26.

Writs of the Peace and good Abearing.

LI. *Item*, For writing Writs for the Peace and good Abearing, granted by any of the said Justices in their Sessions, *vj. d.* and for the entring of every Recognizance to be had and taken before the said Justices, for every Cause or Causes, other than before is expressed, *xij. d.* and if it be with Condition, then *ij. s.* and upon every Acquittal and Deliverance of Felons or Murderers, by Verdict or by Allowance of Pardon, the Prenotaries to have *ij. s.* and if it be upon Indictments certified from the Justices of the Peace, afore the Justices in the great Sessions, the Clerk of Peace to have also *xii. d.* and upon the Delivery of any suspect of Felony or Murder by Proclamation, the said Prenotary to have *xij. d.*

The King shall have Fines, Issues, Americaments.

LII. *Item*, That the King's Majesty shall have all Fines, Issues, Amerciaments, and all Forfeitures of Recognisances, lost or forfeited before any of the said Justices in the Session aforesaid; and that the said Prenotaries, within the Limits of their Offices, shall yearly estreat the same into the Exchequer appointed for that Limit, to the Intent that Process from thence may be awarded to the Sheriffs to levy the same to the King's Use, as appertaineth, which Sheriffs shall yearly make their Accompts before the King's Auditors thereunto to be assigned and appointed.

Justices of Peace altered by 5 & 6 W. & M. c. 4.

LIII. *Item*, Over and besides the said President and Council and Justices, there shall be Justices of Peace and *Quorum*, and also one *Custos Rotulorum*, in every of the said twelve Shires.

LIV. *Item*, That the said Justices of Peace, Justices of *Quorum*, and *Custos Rotulorum*, in the said Shires, shall be named and appointed by the Chancellor of *England*, by Commission under the King's Great Seal of *England*, by the Advice of the President, Council and Justices aforesaid, or three of them, of the which the said President to be one, from Time to Time as the Case shall require.

LV. *Item*, That there shall not exceed the Number of eight Justices of the Peace in any of the said Shires, over and besides the President, Council, and Justices aforesaid, and the

No. 28. 34 & 35 Henry VIII. c. 26.

King's Attorney and Solicitor, shall be put in every Commission of Peace in every of the said twelve Shires.

The Justices of Peace, their Oath.

LVI. *Item,* That such Persons as shall be named to be Justices of Peace within every of the said Shires shall be of good Name and Fame; and after they be assigned by Commission, may use and exercise the Office of Justice of the Peace, albeit they may not dispend twenty Pound, nor be learned in the Laws of the Lands, without any Loss, Damage, or Penalties for Insufficiency of their Lands: And that every of the said Justices of Peace, before they shall execute their Commission, shall take their Oaths before the Chancellor of *England,* or else before the said President, or one of the said Justices in *Wales,* by Virtue of the King's Writ of *Dedimus potestatem,* or before any other Person to be limited by the Lord Chancellor of *England* for that Purpose, the Contents of which Oath shall be after the Form as Justices of Peace in *England* use to make.

The Justices Sessions, Authority and Fees.

LVII. *Item,* That the said Justices of Peace, or two of them at the least, whereof one to be of the *Quorum,* shall and may keep their Sessions, within the Limits of their Commissions, four Times in the Year, and at other Times upon urgent Causes, as Justices of Peace in *England* use to do; and shall have like Power and Authority in all Things and Fees of the King's Majesty for the Time of their sitting, as well for themselves as for their Clerks, and shall be bound to use and do their Offices, in like Manner as is used in *England.*

The Fees of the Justices and Clerk of the Peace.

LVIII. *Item,* That no Justices of Peace, Clerk of the Peace, nor other Clerk of any Justice of Peace in *Wales* shall take for the writing of any Warrant of the Peace, or good Abearing, above *vj. d.* and for entering of Pledges or Boroughs to pay the King's Fine upon any Indictment, *ix. d.* and if it be with Protestation, then to take *xij. d.* and for a *Supersedeas* not above *viij. d.* and for a Recognisance *xij. d.* And that all the said Justices of Peace shall certify all Recognisances taken before any of them for the Peace or good Abearing, into their Sessions next to be holden after the taking thereof: and Recognisance taken before any of them, for Suspicions of any Manner of Felony, shall be certified before the Justices of the great Sessions next to be holden after the taking thereof, without Concealment, Detaining, or Imbezzling of the same, upon such Penalties and Damages as be therefore ordained and established.

Certificate of Recognizances.

Taxing of Fines and Amerciaments.

LIX. *Item,* That all Fines and Amerciaments before the said Justices of Peace lost, and hereafter to be lost, shall be taxed and afferred by two Justices of the Peace at the least, whereof one to be of the *Quorum,* and that all such Fines and Amerciaments shall be set truly and duly, according to the Quantity of the Offences, without Partiality or Affection.

Fines, Forfeitures and Amerciaments to be estreated.

LX. *Item,* That the said Fines and Amerciaments, and also all Issues lost before the said Justices of Peace, and all Forfeitures of Recognisances, and other Forfeitures before the same Justices, shall be yearly estreated by the Clerks of the Peace into the Exchequer appointed for that Limit, to the

Intent that Process from thence may be awarded for the levying of the same Forfeitures and Sums of Money to the King's Use, to the Sheriff of every County as shall appertain, who shall make thereof their Accompts before such Auditors as thereunto shall be assigned, so that the King's Majesty may thereof be truly and duly answered and satisfied; which Auditors shall make due Allowance to the same Sheriffs for the Fees of the Justices and Clerks of the Peace, upon their said Accompts, as is used in the Realm of *England*.

No. 28. 34 & 35 Henry VIII. c. 26.

Allowance from Auditors.

LXI. *Item*, That there shall be Sheriffs in every of the said Shires yearly appointed by the King's Majesty; and that none of the said Sheriffs shall have their said Office of Sheriffwick any longer Time than is used by the Laws and Statutes of *England*. And for the yearly Nomination of the said Sheriffs, the said Lord President, Council and Justices of *Wales*, or three of them at the least, whereof the said President to be one, shall yearly nominate three substantial Persons in every of the said twelve Shires, to be Sheriffs of the same, and shall certify their Names to the Lords of the King's most honourable Council, attending upon his Grace's Person, *Crastino Animarum*, to the Intent the King's Majesty, being thereof advertised, may appoint one of them in every of the said Shires to be Sheriff for that Year, at his most gracious Will and Pleasure, like as his Highness doth for this Realm of *England*; and thereupon the said Sheriffs shall have their Patents and Commissions under the Great Seal of *England*, as Sheriffs of *England* have, and shall make and take Oaths and Knowledges of Recognizances before the President and Justices, or one of them, by Virtue of the King's Writ of *Dedimus potestatem* to be directed for the same, for the due Execution of their Offices, and for their just and true Accounts before the King's Auditor or Auditors assigned for *Wales*.

Sheriffs in every Shire of Wales and how they shall be nominated.

LXII. *Item*, That every of the said Sheriffs shall have full Power and Authority, within the Limits of their Sheriffwick, to do and use their Offices as Sheriffs in *England*, and shall accomplish and execute, without any Favour, Dread or Corruption, all manner of Writs, Process, Judgments and Executions, and all manner common Justice appertaining to their Offices of Sheriffs, and all lawful Commandments and Precepts of the said President, Council and Justices of *Wales*, and also of the Justices of the Peace, Escheators and Coroners, and every of them, in all Things appertaining to their Offices and Authorities.

The Sheriffs Authority and Duty in Wales.

LXIII. *Item*, That the said Sheriffs shall do, and be bound to do, all and every other Thing and Things for the Ministration of Justice, and for the Conservation of the King's Peace, and the Apprehension and Repress of Traytors, Murderers, Thieves, Felons and other Offenders, as Sheriffs of *England* do use and be bound to do within the Realm of *England*.

The Sheriffs Duty in Administration of Justice.

LXIV. *Item*, That the said Sheriffs shall yearly accompt before such the King's Auditor or Auditors as shall be assigned

Enforced by 3 Geo. 1. c. 15. § 22.

No. 28. 34 & 35 Henry VIII. c. 25.

and appointed by the King's Majesty for his said Dominion of *Wales*; and that every of the said Sheriffs shall have yearly for his Fee *v l.*

All Officers and other Persons shall be attendant on the President, &c.

LXV. *Item*, That all Mayors, Sheriffs, Stewards, Bailiffs, and other Ministers and Officers of Justice of every County, Lordship, Town and Place within the said Dominion of *Wales*, and all and singular the King's Subjects of the same shall be always obedient, attendant and assisting to the said President, Council and Justices of *Wales*, and every of them, and shall obey the King's Commandments and Process from them or any of them directed, and all the lawful and reasonable Precepts of the said President, Council and Justices, and every of them, and also shall be obedient to all the said Justices of Peace, Sheriffs and Escheators, within the Limits of their said Authorities, as well for common Administration and due Execution of Justice, as in all other Things appertaining to their Duties and Offices.

Escheators shall be named in every Shire in Wales.

LXVI. *Item*, That Escheators shall be named in every of the said Shires by the Lord Treasurer of *England*, by the Advice of the said President, Council and Justices, or three of them at the least, whereof the said President to be one; which Escheators shall make and take their Oaths, and knowledge their Recognizances, before the said President, or one of the said Justices, by Virtue of the King's Writ of *Dedimus potestatem* to be directed for the same, for the due Execution of their Offices, and for their true Accompt to be made before the King's Auditor or Auditors to be assigned for the same; which Oath and Recognizance shall be agreeable to the Oath and Recognizance used for the Escheators in *England*; and the Escheators shall yearly have their Patents and Commissions under the Great Seal of *England*, and shall have Power and Authority to exercise their Offices in like Manner and Form as Escheators in *England*, and shall be bound to all Laws and Statutes of *England*.

What Freehold an Escheator in Wales must have.

LXVII. *Item*, That all such Persons as shall be appointed to the said Offices, shall and may exercise their Offices, if they may dispend yearly *v l.* of Freehold, any Statutes of *England* to the contrary thereof notwithstanding; and that every of the said Escheators shall make their Accompts yearly before such Auditor or Auditors as shall be assigned by the King's Majesty to hear and determine his Highness Accompt for his Revenues and Profits of the said Dominion of *Wales*.

Two Coroners in every Shire in Wales.

LXVIII. *Item*, There shall be two Coroners to be elected in every of the said twelve Shires, as is used in *England*, by Virtue of the King's Writ *De Coronatore eligendo*, to be awarded out of the King's Chancery of *England*; and that the said Coroners shall have like Power and Authority to do and exercise their Offices, and have like Fees, as is limited by the Laws and Statutes of *England*.

LXIX. Provided always, That the Writ *De Coronatore eligendo*, to choose the Coroners within the said County of *Flint*, shall be directed out of the Exchequer of *Chester*.

LXX. *Item*, That the said Justices of the Peace, or two of them at the least, whereof one of them to be of the *Quorum*, shall appoint and name, in every Hundred within the Limits of their Commission, two substantial Gentlemen or Yeomen, to be the chief Constables of the Hundred wherein they inhabit; which two Constables of every Hundred shall have a special Regard to the Conservation of the King's Peace, and shall and may do and use their Offices in all and singular Things, as is used by the High Constables of the Hundreds in *England*, and shall be bound to all Things as the High Constables of the Hundreds in *England* be bound to do.

No. 28. 34 & 35 Henry VIII. c. 26.

Two Constables of the Hundred.

LXXI. *Item*, That every of the said Sheriffs shall have a Gaol for Prisoners within some convenient Place of the Castles of the Shire-towns where he is Sheriff, or in such other convenient Place, as by the said President, Council and Justices, or three of them, whereof the said President to be one, shall be appointed: any Patent or Grant heretofore made to any Person or Persons of the Constableship or Keeping of any of the said Castles in any wise notwithstanding. And that the Sheriff shall make the Bailiffs of the Hundreds, and they to attend upon the Justices in every of their Courts and Sessions.

A Gaol to be provided by the Sheriffs and Bailiffs of the Hundred.

LXXII. Provided always, That the Constables of the King's Castles within every of the said Shire-towns of *Wales* shall not be charged with the Gaols, and of all the Prisoners that shall be committed to their Ward, like as they have heretofore been, until such Time, convenient Places for that Purpose be assigned to the said Sheriff.

LXXIII. *Item*, The said Sheriffs shall keep their Counties monthly, and their Hundred Courts for Pleas under *xl. s.* as is used in *England*; and shall take for the entering of Plaints, Process, Pleas and Judgments in the said Shire-courts and Hundreds, such small Fees as is used to be taken in Shires and Hundreds in *England*, and not above.

County Courts. Hundred Courts.

LXXIV. *Item*, That all manner of Trials before them in their said Courts, or before any Stewards in Court Barons, shall be by Wager of Law, or Verdict of six Men, at the Pleasure of the Party Plaintiff or Defendant that pleaded the Plea.

Trial by Wager of Law or six Men.

LXXV. And that every of the said Sheriffs shall keep and hold their Torns yearly after *Easter* and *Michaelmas*, as they have been used in *England*.

Sheriffs Towns.

LXXVI. *Item*, The King's Highness shall have all manner of Fines, Issues, Amerciaments, and Forfeitures lost or forfeited in any of the said Counties, Hundreds, Courts and Torns, to his own Use, and the Sheriff to account for the same accordingly.

Fines forfeit in Torns, &c.

LXXVII. *Item*, That the Estreats of the said Torns, Counties and Hundreds shall be viewed, and the Fines, Issues and Amerciaments affered by the said Justices of Assises of that Circuit, before the levying of the same Amerciaments or other Forfeitures; and that no Sheriff, or any of his Officers, presume to gather or levy any such Amerciament, or other

The Estreats affered by the Justices of Assise.

No. 28. 34 & 35 Henry VIII. c. 26.

The Sheriff may award Execution.

Forfeiture, before the said Estreat be so affered, upon Pain to forfeit to the King's Use *xl s.* And that the Sheriff upon every Judgment had before him in his County or Hundred Court, in any Plaint under *xl. s.* shall and may award a *Capias ad satisfaciendum,* to arrest the Party condemned, or else a *Fieri fac',* at the Liberty of the Party pursuant.

Sheriffs Fees for executing several Writs.

LXXVIII. *Item,* That all Bills sued before the said Justices in personal Actions, whereof the Debt, Duty or Damage is under *xl. s.* the Sheriffs shall have for the Return of every Bill *ij. d.* and every *Venire fac', Tales, Habeas corp',* and *Distr' ij. d.* and for Writs of Execution upon the Judgment in any such Bill, *xij. d.*

Bills sued before the Justices.

LXXIX. *Item,* In Bills sued before the said Justices in Actions personal above the Sum of *xl. s.* the Sheriff shall have, for the Return of every such Bill *iv. d.* and for the Return of every *Venire fac', Habeas corp', Distr'* and *Tales, iv. d.* and for every Writ of Execution *ij. s.* And in all personal Actions sued by original Writs returnable before the said Justices, the Sheriff shall have for every *Iterum sum' Distr'* and *alias Distr', iv. d.* and for every *Venire fac', Habeas corp', Distr'* and *Tales, vj. d.* and for every Writ of Execution to be executed upon the Judgment in such Actions, *ij. s.* For the serving of every Writ of *Elegit, vj. s. viij. d.* And in all real Actions, or mixt, pursued before the said Justices by original Writ, for Return of every Original, *ij. s.* and for the Return of every other Writ and judicial Process depending upon the same, before Judgment, *ij. s.* and for every Writ of Execution after Judgment, upon every Original, in Actions real or mixt, *ij. s.* and for the serving of every Writ of *Haberi fac' seisinam, vi. s. viij. d.*

Attachments or other Process sued by original, &c.

LXXX. *Item,* For Attachments upon *Capias,* or other Process sued before the said Justices by original or judicial Writ, if he return *Cepi Corpus, ij. s.* and for a *Reddit se,* upon an Exigent of Felony, in Appeal of Murder or Maim, or upon any Indictment of Felony or Murder, *ij. s.* and upon a *Reddit se,* upon an Exigent of Debt, Trespass, Detinue, and all other Actions personal *i. s.* and for the making of *Replegiar' i. s.* and *Withernam* upon the same *i. s.* For the Return of every Writ of Appeal of Murder or Felony, or Maim, *i. s.* and upon all other Process grown upon the same, as *Venire fac', Tales, Habeas corp'* and *Distr', i. s.* and in every Action taken before the Sheriff by *Justicies,* for the Summons thereof, *iv. d.* and for every other Process thereupon, *iv. d.* and for every Prisoner delivered by Acquittal, or by Proclamation, for any manner of Felony, *i. s.*

Suspect Persons may be put under common Mainprise.

LXXXI. *Item,* That every Sheriff, within the Limits of his Authority, may and shall put such Persons under common Mainprise, as they have reasonable Cause of Suspect, according to the said Act made for *Wales,* binding such as they shall so put to common Mainprise with two sufficient Sureties with them, by Recognisance, to appear before the said Justices within the Limits of their Authorities, at the next great Ses-

sions, to be holden next after the taking of such Bonds, and shall certify the Names of them that be bound, before the said Justices at the said Sessions accordingly, without Concealment thereof, at their Pleasure.

No. 28. 34 & 35 Henry VIII. c. 26.

LXXXII. *Item,* That every Person that the Sheriff taketh to common Mainprise, to appear before the said Justices as is aforesaid, shall pay for his Mainprise *ij. d.* and not above; and the said Sheriffs to put no Man to common Mainprise but such as be suspect, and as shall be returned by them before the said Justices at their Sessions as is aforesaid. And also the said Sheriff shall have, for the Return of a Writ of false Judgment, out of a base Court, before the said Justices, *ij. s.* and that the said Sheriffs shall take no manner of Fees for the Return of any of the said Writs of Execution afore expressed, unless he return the same executed.

Sheriffs Fees for common Mainprise, and serving of Writs.

LXXXIII. *Item,* That in all and every such Writs, Original or Judicial, or other Process, Pleas or Writings, which be not expressed in this Ordinance, the Fees thereof, as well for the Seals as Writing, shall be rated by the said President, Council and Justices, or three of them, whereof the said President to be one, by their Discretions from Time to Time, as the Case shall require; and that they shall have full Power and Authority from Time to Time to assess and appoint what Fee the said Sheriffs, Escheators and Coroners, and their Ministers, Prenotaries and their Clerks, and other Ministers of Justice in the said Shires, shall have, take and receive of the King's Subjects, for any Manner Writs, Plaints, Pleas, Process, Returns, or any other Matter or Thing concerning or belonging to the Execution of their Offices and Rooms, and to augment or diminish any Fee or Fees above declared, as shall be thought by their Discretions to be convenient and meet for the Commonwealth of the King's Subjects of those Parts of *Wales;* any Thing contained in this Act to the contrary thereof notwithstanding.

Fees shall be rated, augmented and diminished by the President, Council and Justices.

LXXXIV. *Item,* That from henceforth no Manner of Person or Persons, for Murder or for Felony, shall be put to his Fine, but suffer according to the Laws of the Realm of *England,* except it please the King's Majesty to pardon him or them; and if the said Justices see Cause of Pity, or other Consideration, they may reprieve the Prisoner till they have advertised the King's Majesty of the Matter.

No Felon put to his Fine, but may be reprieved.

LXXXV. *Item,* That the Act made in the Parliament holden in the twenty-sixth Year of the most Royal Reign of the King's Majesty, concernnig (among other Things) Inquisitions and Trials of counterfeiting, washing, clipping and minishing of the King's Coin, Murders, Felons and Accessaries to the same, perpetrated or done within *Wales,* to be had, made and determined in the next Shire or County within *England* adjoining, where the King's Writ runneth, and every Article therein contained, shall stand in his full Strength and Force, according to the Tenor and Effect of the same; any Thing in

A Confirmation of 26 H. 8. c. 6. concerning Inquiry of Offences done in Wales in the Counties next adjoining.

No. 28. this said Ordinance, or any other Act, Cause or Matter heretofore had or made to the contrary thereof notwithstanding.

34 & 35 Henry VIII. c. 26.

'LXXXVI. And albeit the same Act as yet was never put 'in Execution for any of the said Offences heretofore done or 'committed within any of the said three Shires of *North Wales*; 'that is to say, the Counties of *Anglesey*, *Caernarvon* and *Merioneth*,' be it now declared and enacted by the Authority aforesaid, That the said Act, and every Article therein contained, shall from henceforth take Effect, and be executed in all Points for and concerning any of the said Offences perpetrated and done, or that hereafter shall be perpetrated or done, within the said County of *Merioneth*, to be enquired of, heard and determined within the County of *Salop*, in like Manner and Form as commonly is and hath been used for any of the same or like Offences committed or done within any other County of *South Wales*; any Matter or Cause heretofore risen or grown to the contrary thereof notwithstanding.

Abertanned annexed to Salop, and within the Hundred of Oswestre.

LXXXVII. *Item*, That the Town or Hamlet of *Abertannad*, and all the Grounds and the Soil within the same, which afore this Time hath been taken, reputed and used as Parcel of the said County of *Merioneth*, shall from the Feast of *Easter* next coming, by Virtue of this Act, be united, annexed and made Parcel of the said County of *Salop*; and so from thenceforth to be reputed, taken and used for ever, and not to be of any other Shire or County of *Wales*; and that the same Town or Hamlet, and all the Ground and Soil within the same Town or Hamlet, be from and after the said Feast accepted and taken as Part and Parcel of the Hundred of *Oswestre*; and that the Inhabitants thereof from the said Feast shall be attendant, and do every Thing and Things with the Inhabitants of the said Hundred of *Oswestre*, as the same Inhabitants do or be bound to do; any Laws or Customs to the contrary thereof notwithstanding.

Foreign Plea of Voucher triable in any other Shire in Wales or England.

LXXXVIII. *Item*, In case any foreign Plea or Voucher be hereafter pleaded or made before any of the said Justices of *Wales*, between Party and Party, triable in any other Shire within *Wales*, than where the same Plea is pleaded or Voucher made; that then the said Justices, afore whom the same Plea or Voucher is or shall be pleaded or made, shall and may send the King's Writ, with a Transcript of the Record mentioning the same foreign Matter of Plea or Voucher, under the Seal to him committed, unto the Justice of the County where the same Matter is or shall be triable, commanding the said Justice, by Virtue of the said Writ, to proceed to the Trial thereof according to the King's Laws and Statutes; which Trial so before him had, he shall remand with the whole Record unto the Justice before whom the said Plea or Voucher was pleaded or made, who thereupon shall proceed to Judgment, as the Case shall require.

LXXXIX. *Item*, In case the same foreign Plea, Voucher or other Matter so pleaded, be triable within this Realm of

*England*, that then in every such Case the Justice, afore whom the same Plea or Voucher is or shall be pleaded, had or made, shall and may proceed to the Trial thereof, as shall appertain, within the same Shire of *Wales*, where the same Plea, Voucher or Matter was pleaded; the said foreign Plea, Voucher, or any other Thing or Matter to the contrary thereof notwithstanding.

No. 28. 34 & 35 Henry VIII. c. 26.

XC. *Item*, That no Manner of Person or Persons from henceforth, without lawful Authority, shall make any Rumours, Tumults, unlawful Assemblies or Outcries at any of the said Courts or Sessions, nor any Outcries and unlawful Assemblies in great Numbers at any other Time or Times, except it be for the Apprehension or pursuing of Murtherers or Felons; upon Pain of Imprisonment and grievous Fine to be taxed and set upon them by the said President and Council, or by the Justices or other Officer before whom such Misdemeanor shall happen to be committed.

No Rumours, Tumults, unlawful Assemblies or Outcries shall be in Wales.

XCI. *Item*, That all Manors, Lands, Tenements, Messuages and other Hereditaments, and all Rights and Titles to the same, in any of the said Shires of *Wales*, descended to any Manner Person or Persons sith the Feast of the Nativity of St. *John Baptist* in the thirty-third Year of our said Sovereign Lord's Reign, or that hereafter shall descend, be taken, enjoyed, used, and holden as *English* Tenure, to all Intents, according to the common Laws of this Realm of *England*, and not to be partable among Heirs Males, after the Custom of *Gavelkind*, as heretofore in divers Parts of *Wales* hath been used and accustomed. And that the same Law, from and after the said Feast of St. *John Baptist*, in the said thirty-third Year, be used, taken, and exercised in the said County of *Monmouth*, and in all such Lordships and other Places as by virtue of the said Act made in the said twenty-seventh Year, or by any other Act or Acts made or to be made, were and shall be annexed, united, or knit to any of the Shires of *Salop*, *Hereford*, *Gloucester*, or other Shire; any Laws, Usages, or Customs heretofore had or used to the contrary thereof notwithstanding.

All Lands in Wales shall be English Tenure, and not partable.

27 H. 8. c. 26.

XCII. *Item*, That no Mortgages of Lands, Tenements, or Hereditaments made or had after the said Feast of St. *John Baptist*, which was in the said thirty-third Year of the Reign of our said Sovereign Lord, or that hereafter shall be had or made within any of the said Shires or Places, shall be hereafter allowed or admitted, otherwise than after the Course of the Common Laws or Statutes of the Realm of *England*; any Usage or Custom heretofore had to the contrary thereof notwithstanding.

Mortgages of Lands in Wales.

XCIII. *Item*, It shall be lawful to all Persons to aliene, sell, or otherwise put away their Lands, Tenements, and Hereditaments within the said Country or Dominion of *Wales*, the County of *Monmouth*, and other Places annexed to any of the Shires of *England*, from them and their Heirs, to any Person or Persons in Fee-simple or Fee-tail, for Term of Life, or for Term of Years, after the Manner and according as is used

All Persons may sell their Lands, or demise them after the Manner of England.

No. 28. 34 & 35 Henry VIII. c. 26.

by the Laws of the Realm of *England*; any *Welsh* Law or Custom heretofore used in the said Country or Dominion of *Wales* to the contrary thereof notwithstanding. This Article to take Effect from and after the said Feast of the Nativity of St. *John Baptist*, which was in the said thirty-third Year of our said Sovereign Lord's Reign.

Persons having Lands in Wales bound by Statute in England.

XCIV. *Item*, If any Person or Persons having Lands or Tenements within the said Dominion of *Wales*, been or hereafter shall be bound within the Realm of *England*, by Obligation upon the Statute of the Staple, or by Recognizance, and pay not the Debt as shall appertain, that then upon Certificate thereof made unto the King's Chancery of *England*, by the Clerk of the Staple, or by any Justice of Record before whom such Recognizance shall be knowledged, Process shall be made to the Sheriffs of *Wales* out of the Chancery of *England* after the Form as is used to be made upon Statutes and Recognizances, by the Course of the Laws of *England*, for the due levying and paying of the said Debt.

Recognizances taken in the King's Bench or Common-place.

XCV. Provided always, and be it enacted by the Authority aforesaid, That for such Recognizances as be or hereafter shall be taken and knowledged before the King's Justices of his Highness Bench or Common-place in *England*, Process shall be had and pursued immediately out from the said Justices, as is used upon Recognizances taken before the said Justices by the common Course of the Laws of *England*.

Writs, Bills, Plaints, &c.

XCVI. *Item*, That all such Writs, Bills, Plaints, Pleas, Process, Challenges and Trials shall be used throughout all the Shires aforesaid, before the said Justices in their Sessions, as is used in *North Wales*, or as shall be devised by the said President, Council and Justices, or three of them, whereof the said President to be one, for the good Ministration of Justice to be had in every of the said Shires.

33 H. 8. c. 13.

'XCVII. *Item*, Where the Lordship of *Hope*, with 'divers other Lordships, Parishes, Towns and Hamlets, were 'by an Act of Parliament made in the thirty-third Year of the 'Reign of our said Sovereign Lord appointed and translated 'from the said County of *Denbigh* to the County of *Flint*, and 'by the same Act were made Part, Parcel, and Members of the 'same County of *Flint*, afore which Appointment or Translation divers Indictments and Presentments, as well of Felony 'as other Offences, were had and taken for the King's Highness, before the Justice of the said County of *Denbigh*, in 'the great Sessions there, and some before the Justices of the 'Peace within the same County, for Offences supposed to be 'done within divers of the said Lordships so translated, and 'also divers Judgments given at the Suit of the Parties before 'the said Justices; and some before the Sheriff of the said 'County of *Denbigh*, for Matters risen and grown within the 'Precinct of the said Lordships or other Places, before the 'Translation of the same:' It is now ordained and enacted, that all the said Indictments and Presentments shall be heard, tried and determined within the said County of *Denbigh*, by

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Persons as well of the said Lordship or Place where the said Offences were done or committed, as of other Place or Places within the said County of *Denbigh*, in Manner and Form, as though the said Translations had never been had ne made: And also that the said Judgments as before given or had between Party and Parties, before any Justice of Record or other Officer within the said County of *Denbigh*, for any Matter or Cause, appearing by the Record of the same to be grown and risen within any of the said Lordships, Parishes, Towns, or Hamlets so translated, shall and may be executed by the Sheriff of the said County of *Denbigh* within any of the same Lordships, or other Place so translated; the said Translation, or any other Cause or Matter to the contrary thereof notwithstanding.

Indictments or Presentments made for Suits depending in Lordships that were removed from one County to another.

XCVIII. *Item*, Like Law and Order to be kept and ministred upon all other like Translations of any other Lordships, Manors, Towns, Parishes, and other Places within *Wales*, had, made, or done in this present Parliament, or any other afore or after the same Translations, or any other Cause or Matter to the contrary thereof notwithstanding.

XCIX. *Item*, Where there shall be divers and many Suits taken before the said Justices in Pleas personal, which (as it is thought) cannot be tried before them in the Time of the said great Sessions, for Brevity of Time: Therefore, and for the speedy Trial of these Matters, the Issues taken in the said Suits shall and may be tried at a petty Sessions, before the Deputy Justices there, as is and hath been used in the said three Shires of *North Wales*; except such of the said Suits, as by the Discretion of the said Justices shall be thought necessary to be tried before themselves, within their Limits; and that there shall be no Suit taken before any of the said Justices by Bill, under the Sum of twenty Shillings.

Suits tried at a Petty Sessions.

No Suit by Bill under xxs.

C. *Item*, If any Murder or Felony hereafter be committed or done within *Wales*, that then the Party or Parties to whom any such Offence shall hap to be committed, shall in no wise make any End or Agreement with the Offenders in that Behalf, nor with any other in his Name or Behalf, unless the said Party first make the said President and Council, or one of the said Justices, privy unto the same, upon Pain of Imprisonment, and grievous Fine to be set and adjudged at the Discretion of the said President, Council and Justices, or two of them, whereof the said President to be one; the same Pain and Penalty to extend as well to and against such as shall labour, move, or procure any such End or Agreement made, although the same Labour, Motion, or Procurement never take Effect, to make any End or Agreement, as against him or them with whom such End or Agreement shall be made, if the same happen to take Effect.

No Agreement shall be made with a Felon without Consent of the President, &c.

'CI. *Item*, Where divers Lordships Marchers, as well in 'Wales, as in the Borders of the same, now being by Act 'of Parliament annexed to divers Shires of *England*, be lately 'come to the King's Hands by Suppression of Houses, by

32 H. 8. c. 20.

No. 28. 34 & 35 Henry VIII. c. 26.

'Purchase or Attainders, and now be under the Survey of the 'Court of Augmentations, or of the King's general Surveyors, 'the Liberties, Franchises, and Customs of all which Lord- 'ships be lately revived by Act of Parliament made in the 'thirty-second Year of his most gracious Reign;' nevertheless his Majesty willeth and commandeth, that no other Liberties, Franchises, or Customs shall from henceforth be used, claimed, or exercised within the said Lordships, nor any other Lordships within *Wales*, or the County of *Monmouth*, whosoever be Lord or Owner of the same; but only such Liberties, Franchises and Customs, as be given and commanded to the Lords of the same Lordships, by Force and Virtue of the said Act of Parliament made for *Wales*, in the said twenty-seventh Year of his Grace's Reign, and not altered ne taken away by this Ordinance; the said Act made in the said thirty-second Year, or any other Act, Grant, Law, or Custom to the contrary thereof notwithstanding.

Franchises of Lordships in Wales, and the Marches of the same.

27 H. 8. c. 26.

Peaceable Possession of Lands five Years.

CII. *Item*, That if any Person or Persons, their Ancestors, or they whose Estate the same Person or Persons have or hath, in peaceable Possession, of any Lands or Tenements in *Wales*, by the Space of five Years, without Lett, Interruption, or lawful Claim: That then the same Person or Persons shall still continue their Possession, until such Time as it shall be lawfully recovered against them by the Order of the King's Laws, or by Decree of the President and Council there.

Jury de circumstantibus.

CIII. *Item*, In Actions personal, taken and pursued before the said Justices in *Wales*, by original Writ or Bill, if nine of the Jury be sworn to try the Issue between the Party Plaintiff and the Defendant, and the Residue of the said Jury make Default, or be tried out: Then the Sheriffs shall and may immediately return other Names in the said Jury, *de circumstantibus*, unto such Time there be twelve Men sworn to try the Issue between them, as before the Justices of *North Wales* hath been afore used and accustomed in such Cases.

No sale of stolen Goods shall change the Property.

CIV. *Item*, That if any Goods or Chattels be stolen by any Person or Persons, and sold in any Fair or Market within the said Dominion of *Wales*, that no such Sale shall change the Property thereof from the Owner of the same, but that he may lawfully seize, take and have the same again, upon Proof thereof made, the said Sale notwithstanding.

None shall buy Cattle out of the Market.

CV. *Item*, That no Person or Persons bargain or buy any manner of Beast or other quick Cattle in any Place within *Wales*, out of the Market or Fair, unless he can bring forth sufficient and credible Witness of the Name of the Person, what Place and Time he bought the same, upon Pain and Danger of such Punishment and Fine as shall be set upon him by the said President and Council, or any of the said Justices in his Circuit, for the said Offence; and as he will therefore answer at his further Peril.

Following of stolen Goods.

CVI. *Item*, If any Goods or Chattels be stolen within the Limits of any of the said Shires in *Wales*, that then upon Suit thereof had and made, the Track shall be followed from

Township to Township, or Lordship to Lordship, according to the Laws and Customs in that Behalf heretofore used in *Wales*, upon such Penalty and Danger as heretofore hath been accustomed.

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CVII. *Item*, That every Person that hath any Lands or Tenements in Fee-simple or Fee-tail, or for Term of Life, or for Term of any other Man's Life, being Freehold, shall and may pass in all manner Juries and Trials, as well in case of Felony or Murder, as in all Actions real, personal and mixt, whatsoever they be, Attaint only except; and also may be impanelled, and inquire of all Concealments, forcible Entries, and other Causes of Inquiry for the King's Majesty, albeit he may not dispend forty Shillings by the Year; saving to every Man his lawful Challenge for any other Cause, according to the Laws of this Realm of *England*.

A Freeholder may pass in any Jury.

CVIII. *Item*, That no Juror shall pass in Attaint, unless he may dispend forty Shillings by the Year of Estate of Freehold.

Juror in Attaint.

CIX. *Item*, The Tenants and Resiants in *Wales* shall pay their Tallage at the Change of their Lords in such Places, and after such Form as hath been heretofore accustomed in *Wales*.

Tallage at the Change of Lords.

CX. *Item*, That all the King's Subjects and Resiants in *Wales* shall find, at all Parliaments hereafter to be holden in *England*, Knights for the Shires, and Citizens and Burgesses for Cities and Towns, to be named and chosen by Authority of the King's Writ under the Great Seal of *England*, according to the Act in that Case provided, and shall be charged and chargeable to all Subsidies and other Charges to be granted by the Commons of any of the said Parliaments, and pay all other their Rents, Farms, Customs and Duties to the King's Highness, as they have been accustomed heretofore; Fines for Redemption of Sessions only excepted, which the King's Majesty of his most gracious Goodness and Liberality is contented and pleased to remit, at the humble Suit of his said loving Subjects of his said Dominion of *Wales*.

Knights for Shires, Burgesses.
27 H. 8. c. 26.
Subsidies and Charges
Fines for Redemption of Sessions remitted.

CXI. *Item*, That the Town of *Haverfordwest* shall after the End of this present Parliament for ever find one Burgess for the said Town, at every Parliament after that Time to be holden: And the Charges of the same Burgess to be always born by the Mayor, Burgesses and Inhabitants of the said Town, and none other.

Haverford a Burgess.

CXII. *Item*, That the King's Majesty shall have all Felons Goods, and Goods of Persons outlawed, Waifs, Strays, and all other Forfeitures and Escheats whatsoever they be, answered thereof by the Hands of the Sheriffs, saving always the Rights and Interests of every of his Subjects having lawful Title to have the same.

Felons Goods, Waifs, Strays.

CXIII. *Item*, That all Errors and Judgments before any of the said Justices at any Time of the great Sessions, in Pleas real or mixt, shall be redressed by Writ of Error, to be sued out of the King's Chancery of *England*, returnable before the

In what Courts Errors in Wales shall be redressed.

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King's Justices of his Bench in *England*, as other Writs of Error be in *England*. And that all Errors in Pleas personal shall be reformed by Bills to be sued before the said President and Council of *Wales*, from Time to Time, as the Party grieved will sue for the same. And if in case the Judgment be affirmed good in any of the said Writs of Error or Bills, then there to make Execution, and all other Process thereupon, as is used in the King's Bench of *England*: And that the Pursuants in every such Writ of Error or Bill do pay like Fees therefore as is used in *England*.

False Judgment.

CXIV. *Item*, That no Execution of any Judgment given or to be given in any base Court be stayed or deferred by reason of any Writ of False Judgment, but that Execution shall and may be had and made at all Times before the Reversal of the said Judgment, the Pursuit of the said Writ notwithstanding. And in case the said Judgment happen after to be reversed, then the Party pursuant to be restored to all that he hath lost by the said Judgment, according to the Laws of the Realm of *England*.

Process for weighty Causes.

CXV. *Item*, That all Process for urgent and weighty Causes shall be made and directed into *Wales*, by the special Commandment of the Chancellor of *England* for the Time being, or any of the King's Council in *England*, as heretofore hath been used; any Thing in this Act to the contrary thereof notwithstanding.

Bewdley shall be within the County of Worcester.

CXVI. *Item*, That the Town of *Bewdley*, which is within the Parish of *Ribbesford* in the County of *Wigorn*, and all the Ground and Soil of the same Town, shall from henceforth be united, annexed and made Parcel of the County of *Wigorn*, and to be within the Hundred of *Dodingtre*. And that all the Inhabitants of the said Town and Parish shall from henceforth be attendant, and do every Thing and Things with the Inhabitants of the said Hundred, as the same Inhabitants be now bound to do by the Laws of this Realm of *England*. Saving always to the Burgesses and Inhabitants of the said Town of *Bewdley* all such Liberties and Franchises as they lawfully had and exercised within the said Town before the making of this Act, in like Manner and Form as though this Act had never been had nor made.

Llanstiffan, Langham and Usterloys shall be within the County of Caermarthen.

CXVII. *Item*, That the Lordship of *Llanstiffan*, *Usterloys* and *Langham*, and the Members of the same, and all Manors, Lands, Tenements, and other Hereditaments in the same Lordship, and the Members of the same, be from henceforth united, annexed, joined, named, accepted and taken as Part and Parcel of the County of *Caermarthen*, and reputed, joined, united, named, accepted and taken as Part and Parcel of the Hundred of *Derles*, in the said County of *Caermarthen*. And that the Tenants and Inhabitants of the said Lordships and Members be attendant, and do every Thing and Things with the Tenants and Inhabitants of the said Hundred of *Derles*, as the said Inhabitants now be bound to do, according to the Laws there used.

CXVIII. *Item,* That the County or Shire Court of the County of *Radnor* shall from henceforth be holden one Time at *New Radnor*, and one other Time at *Preston, alternis vicibus* and never from henceforth to be kept or holden at *Rather Gowey;* any former Act or other Thing to the contrary thereof notwithstanding. No. 28. 34 & 35 Henry VIII. c. 26.

CXIX. *Item,* It is further enacted by the Authority aforesaid, That the King's most Royal Majesty shall and may, at all Times hereafter, from Time to Time, change, add, alter, order, minish, and reform all manner of Things afore rehearsed, as to his most excellent Wisdom and Discretion shall be thought convenient; and also to make Laws and Ordinances for the common Wealth and good Quiet of his said Dominion of *Wales* and his Subjects of the same, from Time to Time, at his Majesty's Pleasure; any Thing contained in this Act, or in the said Act made for the said Shire-Ground of *Wales*, or any other Act or Acts, Thing or Things, to the contrary thereof heretofore made in any wise notwithstanding. The King may add and alter Laws and Ordinances. This Branch is repealed 21 Jac. 1. c. 10. § 4.

CXX. And that all such Alterations of the Premisses, or any Part thereof, and all such Laws and Ordinances to be hereafter made, devised and published by Authority of this Act, by the King's Majesty, in Writing under his Highness Great Seal, shall be of as good Strength, Virtue and Effect, as if they had been had and made by Authority of Parliament.

CXXI. *Item,* Be it further enacted and ordained by Authority aforesaid, That where the King's Majesty that now is, by his Letters Patents bearing Date the first Day of *May* in the thirty-fourth Year of his most prosperous Reign, demised and granted to *William Webbe* the Subsidy and Usage of all Woollen Clothes made or to be made in the County of *Monmouth*, and in the twelve Shires of *Wales*, that is to say, in the County of *Brecknock, Radnor, Montgomery, Caermarthen, Glamorgan, Pembroke, Cardigan, Anglesey, Flint, Denbigh, Caernarvon* and *Merioneth*, and in all and singular Towns and other Places whatsoever they be, within the Precinct and Limits of the said Counties, and elsewhere within the Dominion of *Wales;* to have and hold to the said *William Webbe* and his Assigns, for certain Years yet enduring, that the said *William Webbe*, his Deputies and Assigns, shall have from henceforth full Power and Authority, by Force of this Act, to take for the sealing of every Woollen Cloth hereafter to be made in the said twelve Shires, and elsewhere within the said Dominion of *Wales*, as hereafter is declared, and none otherwise; that is to say, for every whole Piece of Frize, *j. d.* every half Piece of Frize, *ob.* every Piece of Cotton and Lining being *xxiv.* Yards and under, *ob.* and for every Piece of the same being above *xxiv.* Yards, *j. d.* of every Broad-Cloth, *j. d.* of every Piece of Kersey being *xviij.* Yards and above *j. d.* of every Piece of Kersey being under *xviij.* Yards, *ob.* How much the King's Farmer of the Subsidy of Woollen Cloths in Wales shall take for the sealing of a Cloth.

CXXII. Provided always, That this Act, ne nothing therein contained, extend not to charge any manner of Person or Persons being or that hereafter shall be Inhabitant in any of the said Cloths made within the Owners House not put to Sale.

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twelve Shires, or elsewhere within the Dominion of *Wales*, for any Clothes, Frizes, Kerseys, or Linings made or hereafter to be made and occupied within their Houses, and not to put to Sale to any Person or Persons, but to their Servants for their wearing.

The Aulnager in Wales bound to the Laws of England.

CXXIII. And further be it enacted by the Authority aforesaid, That the said Aulnager in *Wales*, by himself, or by his sufficient Deputy or Deputies, shall in all Things to his Office appertaining, do and be bound to do and answer in every Case, like and according as all and every other Aulnager in the Realm of *England* doth or ought to do, according to the Laws and Statutes of the Realm of *England*; and for the contrary doing or exercising of the said Office, shall in every Case and Degree suffer, as by the said Laws and Statutes is ordained, established or enacted for Aulnagers under the Lord Treasurer of *England* for the Time being.

Haverfordwest a County in itself.

CXXIV. And furthermore the King's Majesty is contented and pleased, notwithstanding the Statute made in the twenty-seventh Year of his most gracious Reign, That where there should be but twelve Shires in *Wales*, that the Town of *Haverfordwest* shall be a County in itself as it hath been before this Time used, at the Will and Pleasure of the King's said Majesty; and that it shall be separated from the County of *Pembroke* at the King's said Pleasure. And that the King's High Justice of the said County of *Pembroke*, shall be High Justice of the said County and Town of *Haverfordwest*, and shall have like Power and Authority, to and for the Administration of Justice within the said County and Town of *Haverfordwest*, as is limited and appointed to the said Justice to and for the Administration of Justice in the said County of *Pembroke*. And that the Mayor, Sheriff, Bailiffs and Burgesses of the said County and Town of *Haverfordwest*, from Time to Time, shall be as well attendant, and obey all Precepts and Commandments of the President and Council of our said Sovereign Lord the King in his Marches of *Wales*, as also shall be attendant to all Precepts and Process awarded or directed by the said High Justice unto the Sheriff of the said County and Town of *Haverfordwest*, and to make Return thereof. And the said Sheriff of the said County and Town shall serve all Precepts and Process directed from the said High Justice, in like Manner and Form as the Sheriff of the said County of *Pembroke* is bound to do, and according to the Effect and Purport of the King's Ordinances in that Behalf had, made and provided. And that it shall be lawful unto the said Mayor, Sheriffs, Bailiffs and Burgesses of the said County and Town of *Haverfordwest* aforesaid, to use and exercise all lawful Liberties and Grants, by the King's Majesty or his noble Progenitors to them granted and confirmed at the King's Majesty's Will and Pleasure, according to the Laws of the Realm of *England*, and not otherwise.

The Judicial Seal of Pembroke, &c.

And that the judicial Seal of the said Shires of *Pembroke*, *Caermarthen* and *Cardigan*, being in the Custody and Keeping of the King's High Justice there for the Time being, shall be used in the said

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County and Town of *Haverfordwest*, as the original and judicial Seal of the said Town and County. And that the said Justice of the said Shires of *Pembroke*, *Caermarthen*, and *Cardigan*, shall have like Power and Authority by Virtue of the King's Letters Patents to him made, as well to do all and every Thing and Things concerning common Justice to be ministred within the said Town and County of *Haverfordwest*, as he hath in his said Letters Patents within any of the said Shires of *Pembroke*, *Caermarthen* and *Cardigan*.

CXXV. Provided alway, That this Article touching and concerning the County and Town of *Haverfordwest*, and all Things therein contained, shall stand and endure but only at the King's Majesty's Will and Pleasure, and none otherwise.

This Act prejudicial to no Man's Inheritance.

CXXVI. Provided alway, That this Act or any Thing therein contained shall not be prejudicial nor hurtful to any Person or Persons, or Bodies Politick, for or concerning any Lands, Tenements, Rents, Services, Bondmen, Tolls or other Hereditaments; but that they and every of them, their Heirs, Successors and Assigns, and the Heirs, Successors and Assigns of every of them, shall have, hold and enjoy their Lands, Tenements, Rents, Services, Bondmen, and other their Hereditaments, in such like Manner, Form and Condition, as they had the same before the making of this Act, and as if this Act had never been had ne made.

Every of the King's Officers may enjoy his Office and Fees as he did before.

CXXVII. Provided also, That this Act nor any Thing therein contained shall be hurtful or prejudicial to any Person or Persons for or concerning any Office or Offices, which they or any of them have by virtue of any of the King's Letters Patents, being now in force before the making of this Act, nor to the Fees of Money used and accustomed to be paid for the Exercise of any such Offices, but that every Person and Persons having such Offices and Fees, and their Substitutes and Deputies, shall and may have and exercise their said Offices as is limited by this Act, and as they might have done before the making of this Act, and shall also have and perceive all such Fees for the Exercise of the said Offices, in as large and ample Manner, Form and Condition, as they might before the making of this Act, and as if this Act had never been had ne made.

No Gavelkind Land, but descendable according to the Course of the Common Law.

CXXVIII. Provided always, that all Lands, Tenements and Hereditaments, within the said Dominion of *Wales*, shall descend to the Heirs, according to the Course of the Common Laws of the Realm of *England*, according to the Tenor and Effect of this Act, and not to be used as Gavelkind; any Thing contained in these Provisions, or any of them, to the contrary thereof notwithstanding.

The Offices and Fees of George Blunt reserved.

CXXIX. Provided always, That this Act, ne any Clause, Article or Thing therein contained, be in any wise prejudicial or hurtful to *George Blunt* Esquire, Son and Heir of Sir *John Blunt*, Knight, deceased, for or concerning the Offices of Stewardships of the King's Lordships, or Manors of *Bewdly* and *Clebury*, or any other Office or Offices hertofore granted

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unto the said *George Blunt* by the King's Letters Patents, sealed under the Great Seal of *England*, for Term of Life of the same *George*, or for or concerning any Fees, Wages, Rewards, Annuities, Profits, Commodities, Advantages or Emoluments, appertaining or belonging unto the said Offices or any of them; but that the said *George*, his Deputy and Deputies, shall and may at all Time and Times, during the Life of the same *George*, have, hold, exercise and enjoy the same Offices, and every of them, and also perceive, levy and take the Fees, Wages, Rewards, and all other Profits and Commodities to the same Offices, and every of them, or to any of them belonging, or in any wise appertaining, in as large and ample Manner, Form and Condition, to all Intents, Constructions and Purposes, as though this Act had never been had or made; any Thing before in this Act contained to the contrary notwithstanding.

All Liberties of the Duchy used as before.

CXXX. Provided always, that all Liberties, Franchises and Privileges of the Duchy of *Lancaster*, or in any wise appertaining to the same, shall be of the same Force, Plight, Quality, Goodness and Condition, and may be used in as large and ample Manner, as they were before the making of this Act, and as if this Act had never been had nor made; any Thing in this Act to the contrary thereof notwithstanding. (2.)

(2.) Mr. Barrington observes, that the Justices of the Great Sessions have so long exercised the Power of deciding Causes in a Court of Equity, that it cannot now be disputed; but that, how they originally obtained this Jurisdiction is rather dark, as in the present Statute, which most particularly enumerates every Officer in the Courts of Law, there is no Mention made of any Officer for the Courts of Equity. He also takes Notice, that by a Manuscript of all the King's Officers in the first of Queen Mary, it appears that Roger Vaughan was Chancellor of Brecknock, but Walter Devereux, Viscount Hereford, was at that Time Justice; Sir John Salisbury was likewise then Chancellor of North Wales, and William Cook Justice: so that the Offices in that Reign were considered as distinct. — It is to be remarked, that in Stat. 27 Hen. VIII. c. 26, (the last Number) Sec. 9, it is provided, that there shall be a Chancery at Brecknock and another at Denbigh.

## No. 29.

### 1 Edward VI. c. 10.—The Bill for Exigents and Proclamations in *Wales*, and in the County Palatine of *Chester*.

No. 29. 1 Edward VI. c. 10.

27 H. 8. c. 26.

'WHERE in the High Court of Parliament holden at *Westminster* in the seven and twentieth Year of the most prosperous Reign of the late famous King *Henry* the Eighth, by the Assent of the Lords Spiritual and Temporal, and the Commons, assembled in the said High Court of Parliament, it was enacted and established by Authority of the same Parliament, That his Highness Dominion and Principality of *Wales*, and all Manors, Lands, Tenements, and other Dominions within the said Dominion and Principality of *Wales*, should be divided into twelve Shires or Counties, that is to say, the Shires or Counties of *Glamorgan*, *Radnor*,

'*Brecknock, Caermarthen, Pembroke, Cardigan, Merioneth, Montgomery, Flint, Caernarvon, Anglesey* and *Denbigh*; In every of which said Counties and Shires, amongst the Officers yearly appointed, it was then ordained, that there should be distinct and several Sheriffs yearly: And also where the Counties Palatine of *Chester*, and of the City of *Chester*, be ancient and several Counties Palatine of themselves, in all which said Counties the King's Writ hath not nor yet doth run; so that the Proclamation awarded upon any *Exigent* against any Person or Persons in any Action wherein Process of Outlawry doth lie, according to the Statute made in the sixth Year of the Reign of the said late King, cannot be directed unto the Sheriff or Sheriffs of any of the said Shires or Counties, but unto the Sheriff of the County next adjoining: So that the Party dwelling in any of the said Shires or Counties against whom any such *Exigent* and Proclamation shall be so awarded, shall not, nor can have any Knowledge of the same Suit or Process, by Reason whereof many of the Persons inhabiting in the said Shires or Counties, without Knowledge or Cause of Suit, have been wrongfully and unjustly outlawed to their utter Undoing.'

No. 29. 1 Edward VI. c. 10.

Exigents and Proclamation shall be awarded out of the King's Bench and Common Pleas against any Person dwelling in Wales or Chester.

II. Be it therefore, and for divers other good Considerations, by the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, enacted, ordained and established, That if and whensoever any Writ of *Exigent*, at any Time after the first Day of *April* next coming, shall be awarded at the Suit of the King, or of any other Person or Persons, Plaintiff or Plaintiffs in any Action or Suit in any of the Courts of our said Sovereign Lord the King, his Heirs or Successors, commonly called the King's Bench and the Common Place, against any Person or Persons dwelling in any of the aforesaid Counties in *Wales*, or in the said Counties Palatine of *Chester*, or of the City of *Chester*, or in any of them, that then immediately upon the awarding of every such *Exigent*, the Justice or Justices before whom any such Writ of *Exigent* upon such Suit or Action shall be sued, shall have full Power and Authority to award one Writ of Proclamation according to the Tenor and Effect of Proclamations awarded upon *Exigents*, and directed out of any of the said Courts into *London* against any Person dwelling in any other Shire where the King's Writ is current, according to the Order and Form of the said Statute made in the sixth Year of the said late King, to be directed to such of the aforesaid Sheriffs of any of the aforesaid Counties in *Wales*, and of the Counties Palatine of *Chester*, and of the City of *Chester* for the Time being; where it shall happen the said Defendant, against whom any such Action shall be sued as is aforesaid, to be dwelling: And that every such Writ of Proclamation shall have the same *Teste* and Day of Return, as the *Exigents* whereupon every such Writ of Proclamation shall be awarded shall have; and that every such Sheriff to whom any such Writ of Proclamation shall be

No. 29. 1 Edward VI. c. 10.

directed, shall make Proclamation of the said Writ of Proclamation according to the Tenor of the same, and shall make true Return of the same in such Court, and before such Justices, as the Tenor of the same Writ shall require and demand. And that all Outlawries hereafter to be promulged or pronounced against any Person or Persons upon any such *Exigent* or *Exigents* awarded against any Person or Persons dwelling in any of the said Counties of *Wales*, and in the Counties Palatine of *Chester*, and of the City of *Chester*, and no Writ of Proclamation awarded in Form abovesaid to the Sheriff or Sheriffs of the County where the Party Defendant shall be as is abovesaid dwelling, or not returned, to be clearly void and of none Effect or Force in the Law.

Every Sheriff in Wales and of Cheshire and Chester shall have Deputies in the King's Bench and Common Place.

III. And be it further enacted by the Authority aforesaid, That all and every Sheriff and Sheriffs of every of the said Counties of *Wales*, and of the Counties Palatine of *Chester*, and of the City of *Chester* aforesaid, shall have in every of the said Courts of the King's Bench and of the Common Place one sufficient Deputy at the least, to receive all Writs directed to such the Sheriff or Sheriffs for whom the same Deputy or Deputies shall be appointed, in like Manner and Form, and upon like Pains, as by the former Statutes and Laws of this Realm other Sheriffs of other Shires or Counties within this Realm of *England* be bounden to have in either of the same Courts. And that all Writs of Proclamation aforesaid shall be delivered unto every such Deputy of Record in the same Courts; and also like Fees shall be paid for making every such Writ of Proclamation, and for enrolling the same of Record, as is limited in the said Statute made in the said sixth Year of the Reign of our said late Sovereign Lord King *Henry* the Eighth.

To whom Process against any Person outlawed shall be directed.

IV. And be it further enacted by the Authority aforesaid, That if any Person dwelling in any of the said Counties of *Wales*, after the aforesaid first Day of *April*, shall be outlawed in any Suit or Action aforesaid, That then Writs of Special *Capias Utlagatum* single *Capias Utlagatum, non molestand'* and all other Process, for or against any Person outlawed, shall and may from henceforth be directed to the Sheriff of any of the said Counties in *Wales*, as immediate Officers to the King's said Courts of the *King's Bench* or *Common Place* in that Behalf: And that every such Writs may be delivered of Record to the Deputy of such of the said Sheriffs to whom any such Writ or Process shall be directed, and that every such Sheriff shall make Execution and Return of every such Writ or Process to him directed, upon like Pain and Penalty as is above limited.

The Sheriff's Forfeiture for not returning of a Writ of Proclamation.

V. And be it further enacted and established, That if any such Writ or Writs of Proclamation hereafter directed to any of the Sheriffs of any of the said Shires in *Wales*, or Counties Palatine of *Chester*, or of the City of *Chester*, be delivered unto any of the said Sheriffs for the Time being, or to his or their Deputy, in Manner and Form aforesaid, and the same

Sheriff or Sheriffs do not make true Return of every such Writ or Writs of Proclamation, into such Court and Courts out of which the said Writ or Writs of Proclamation shall be awarded; that for every such *Default* or Non-return, every such Sheriff for the Time being shall lose and forfeit five Pound; the one Half thereof shall be to our Sovereign Lord the King, his Heirs and Successors, the other Half to any such Person or Persons as will sue for the same in an Action of Debt grounded upon this Act, in any of the King's Courts of Record, wherein no Essoin, Protection or Wager of Law shall be allowed or admitted. No. 29. 1 Edward VI. c. 10.

VI. Provided always, That this Act, or any Thing therein contained, shall not in any wise extend or be prejudicial to the same Counties of *Wales*, or to the same Counties Palatine of *Chester*, or of the City of *Chester*, for or concerning such Liberties, Franchises or Privileges, as belong to them or any of them, or to any Ministers or Officers of them or any of them, otherwise or in any other Manner, than by the true Meaning of this Act is before provided and declared; any Thing in this Act mentioned to the contrary notwithstanding. A Reservation of other Liberties in Wales, &c.

VII. Provided always, and be it enacted by the Authority aforesaid, That this Act, ne any Thing therein contained, shall not in any wise be prejudicial or hurtful to any Lord Marcher in *Wales*; but that they and every of them, and their Heirs, and the Heirs of every of them, shall and may have like Liberty, Interest and Preheminence, as they and every of them had, might or ought to have had, before the making of this Act, and as though this Act had never been had ne made; any Thing in this Act mentioned to the contrary in any wise notwithstanding. The Liberties of the Lord Marchers reserved.

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## No. 30.

5 and 6 Edward VI. c. 26.—An Act for Writs of Proclamation upon *Exigend*, to be current in the County Palatine of *Lancaster*.

No. 30. 5 & 6 Edward VI. c. 26.

'WHERE the County of *Lancaster* is, and of long Time 'hath been, one ancient County Palatine of itself, in 'which County the King's Writ hath not, nor yet doth not run, 'so that the Writ of Proclamation awarded upon any *Exigend* 'against Person or Persons inhabiting within the same County, 'in any Action wherein Process of Outlawry doth lie, according to the Statute made in the sixth Year of the Reign of our 'late Sovereign Lord of famous Memory, King *Henry* the 'Eighth, cannot be directed to the Sheriff of the said County 'Palatine, but unto the Sheriff of the County next adjoining unto the said County Palatine, so that the Party dwelling within the said County Palatine, against whom any 'such *Exigend* and Proclamation hath been or shall be awarded, hath not had, nor hereafter can have, any Knowledge of 'the same Suit or Process, by Reason whereof many Persons

Writs upon Exigends and Proclamations shall be current in Lancaster.

6 H. 8. c. 4.

No. 30. 5 and 6 Edward VI. c. 26.

'inhabiting within the said County Palatine, without Knowledge have been outlawed, and hereafter be in like Manner like to be outlawed, to their utter Undoing, if some speedy Remedy be not the sooner provided:'

A Proclamation upon an Exigend awarded against any Person dwelling in the County of Lancaster.

II. Be it therefore, and for divers other good Considerations, enacted, ordained and established by the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if and whensoever any Writ of *Exigend*, at any Time after the first Day of *April* next coming, shall be awarded at the Suit of the King, his Heirs or Successors Kings of this Realm, or at the Suit or Suits of any other Person or Persons, Plaintiff or Plaintiffs, in any Action or Suit in any of the Courts of our said Sovereign Lord the King, his Heirs and Successors Kings of this Realm, commonly called the *King's Bench* and the *Common Place*, against any Person or Persons dwelling within the said County Palatine: That then immediately upon the awarding of every such *Exigend*, the Justice or Justices before whom any such Writ of *Exigend* upon such Suit or Action shall be sued, shall have full Power and Authority by Virtue of this Act, to award one Writ of Proclamation (according to the Tenor and Effect of Writs of Proclamation awarded upon *Exigends*, and commonly directed out of any of the said Courts into *London*, or into any other Shires of this Realm, against any Person or Persons dwelling in other Shire or Shires of this Realm where the King's Writs do run, according to the Order and Form of the said Statute made in the sixth Year of the Reign of the said late King) to be directed to the Sheriff of the said County Palatine of *Lancaster*, where it shall happen the said Defendant, against whom any such Action shall be sued as is aforesaid, to be dwelling, and not to the Sheriff of any other Shire next adjoining to the said County Palatine; any Law, Custom or Usage heretofore used to the contrary notwithstanding: And that every such Writ of Proclamation so to be hereafter awarded to the Sheriff of the said County Palatine, shall have the same *Teste* and Day of Return as the *Exigends* whereupon every such Writ of Proclamation shall be awarded shall have.

The Sheriff of the County of Lancaster shall make Proclamation according to the Tenor of his Writ.

III. And that every such Sheriff of the said County Palatine of *Lancaster*, to whom any such Writ or Writs of Proclamation shall be directed, shall make Proclamations of the said Writ and Writs of Proclamation, according to the Tenor of the same, and shall make true Returns of the same, in such Court and Courts, and before such Justices, as the Tenour of the same Writ and Writs of Proclamation shall require and demand: And that all Outlawries hereafter to be promulged or pronounced against any Person or Persons, upon any such *Exigend* or *Exigends* awarded against any Person and Persons dwelling in the said County Palatine of *Lancaster*, and no Writ of Proclamations awarded in Form abovesaid to the Sheriff of the said County Palatine of *Lancaster*, where the Party Defendant shall be as is aforesaid dwelling, or not returned, to be clearly void, of none Effect nor Force in the Law.

IV. And be it further enacted by the Authority aforesaid, That every Sheriff of the said County Palatine for the Time being shall have in every of the said Courts of the King's Bench and of the Common Place, one sufficient Deputy at the least, to receive all such Writs of Proclamations which shall be hereafter directed to every such Sheriff of the said County Palatine, for whom the same Deputy or Deputies shall be appointed, in like Manner and Form, and upon like Pains, as by the former Statutes and Laws of this Realm other Sheriffs of other Shires or Counties within this Realm of *England* be bounden to have in either of the said Courts: And that all such Writs of Proclamations aforesaid shall be delivered unto every such Deputy or Deputies of Record in the same Courts, and either of them; and also like Fees shall be paid for making every such Writ of Proclamations, and for enrolling the same of Record, as is limited in the same Statute made in the said sixth Year of our said late Sovereign Lord King *Henry* the Eighth.

No. 30. 5 and 6 Edward VI. c. 26.

6 H. 8. c. 4.

V. Be it further enacted and established by the Authority aforesaid, That if any such Writ or Writs of Proclamations hereafter to be directed to any Sheriff of the said County Palatine of *Lancaster*, be delivered unto any of the Sheriffs of the said County Palatine for the Time being, or to his or their Deputy or Deputies, in Manner and Form aforesaid, and the same Sheriff or Sheriffs do not make true Return of every such Writ and Writs of Proclamations into such Court and Courts out of which the said Writ or Writs of Proclamations shall be awarded, that for every such Default of Non-return, every such Sheriff for the Time being shall lose and forfeit five Pounds; the one Half whereof shall be to our Sovereign Lord the King, his Heirs and Successors, and the other Half thereof to any such Person or Persons as will sue for the same in one Action of Debt to be grounded upon this Act, in any of the King's Courts of Record, wherein no Essoin, Protection or Wager of Law shall be allowed or admitted.

The Sheriff's Forfeiture for not returning of a Proclamation.

VI. Provided always, That this Act, or any Thing therein contained, shall not in any wise extend or be prejudicial to the said County Palatine of *Lancaster* for or concerning such Liberties, Franchises or Privileges as belong to the same, or to any Ministers or Officers of the same County Palatine, otherwise or in any other Manner than by the true Meaning of this Act is before provided and declared; any Thing in this Act mentioned to the contrary notwithstanding.

This Statute shall not prejudice the Liberties of the County of Lancaster.

VII. Provided also, and be it further enacted and established by the Authority aforesaid, That if any Person or Persons dwelling within the said County Palatine, after the aforesaid first Day of *April*, shall be outlawed in any such Suit or Action as is aforesaid, that then all Writs of special *Capias Utlagatum*, single *Capias Utlagatum*, *Non molestandum*, and all other Process, for or against any Person or Persons so outlawed, shall and may from thenceforth be directed from Time to Time to the Chancellor of the Duchy of *Lancaster*, who shall make like Writs and Process thereupon, and of like

Process awarded against any Person outlawed, dwelling in the said County Palatine.

No. 30. 5 and 6 Edward VI. c. 26.

Effect, sealed with the Seal of the said County Palatine of *Lancaster*, to be directed to the Sheriff of the said County Palatine for the Time being, as heretofore hath been used and accustomed in such Cases. 1 Ed. 6. c. 10.

## No. 31.

### 5 Elizabeth, c. 25.—An Act to fill up Juries lacking in *Wales de Circumstantibus.*

No. 31. 5 Elizabeth, c. 25.

A Rehearsal of the Statute of 35 H. 8. c 6. touching the filling up a Jury de Circumstantibus.

'WHERE in the Parliament holden at *Westminster* in the thirty-fifth Year of the Reign of our late Sovereign 'Lord King *Henry* the Eighth, Father to our most dear Sove'reign Lady the Queen's Majesty that now is, one wholsom 'and profitable Act and Estatute amongst other was then esta'blished and enacted, intituled by the Name of "An Act 'concerning the Appearance of Jurors in *Nisi Prius*:" Where 'amongst Things in the Act it was established, That where a 'full Jury returned betwixt Party and Party did not appear before 'the Justices of Assize, or *Nisi Prius*, or else after Appearance 'of a full Jury, by Challenge of any of the Parties, the Jury was 'like to remain untaken for Default of Jurors, that the same 'Justices upon Request made by the Party Plaintiff or De'mandant, should have Authority by Virtue of the same Act, 'to command the Sheriff, or other Minister or Ministers to 'whom the making of the said Return should appertain, to 'name and appoint, as often as need should require, so many 'of such other able Persons of the said County, then present 'at the said Assize or *Nisi Prius*, as should make up a full Jury: 'Which Persons so to be named and impanelled by such She'riffs, or other Minister or Ministers, should be added to the 'former Panel, and their Names annexed to the same, and 'further as in the same Act more plainly may appear: Which 'said beneficial Act doth not extend unto the twelve Shires of '*Wales*, ne to the County Palatine of *Chester*, nor to the Coun'ty Palatine *Lancaster*, nor to the County Palatine of *Durham*, 'by Reason whereof many Juries remain untaken betwixt the 'Parties, what for lack of Appearance of Jurors, and some 'because of Challenges, to the great Hindrance of Justice, and 'great Expences and Charges to the Parties:'

In certain Cases a Tales de Circumstantibus may be granted in the 12 Shires in Wales, and in the County Palatine of Chester, &c. by the Justices at their Great Sessions.

II. For Reformation whereof, be it enacted by the Queen our Sovereign Lady, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That in every of the Shires of *Wales*, that is to say, *Pembroke, Carmarthen, Cardigan, Brecknock, Radnor, Glamorgan, Montgomery, Denbigh, Flint, Merionith, Anglesey, Carnarvon*, and in the County Palatine of *Chester*, and in the said County Palatine of *Durham*, and in the said County Palatine of *Lancaster*, where a full Jury shall not appear before the Justices of the Great Session in any of the said Shires or Counties Palatine, or their

Deputies there, or else after Appearance of a full Jury, by Challenge of any of the Parties, the Jury is like to remain untaken for Default of Jurors, That then the same Justices, in every of the said Shires and Counties Palatine for the Time being, or their Deputy or Deputies, upon Request made by the Party Plaintiff or Demandant, shall have full Authority by Virtue of this Act to command the Sheriff, or other Minister or Ministers to whom the making of the said Return shall appertain, to name and appoint, as often as Need shall require, so many of such other able Persons of the said Counties, then present at the said Great-Sessions, as shall make up a full Jury: Which Persons so to be named and impanelled by such Sheriffs, or other Minister or Ministers, shall be added to the former Panel, and their Names annexed to the same: and that every of the Parties shall only have his or their Challenge to the Jurors so named, added and annexed to the said former Panel, by the said Sheriff or other Minister or Ministers, in such wise as if they had been impanelled upon the *Venire facias* awarded to try the said Issue: And that the said Justices, and every of them, and their Deputy or Deputies, shall and may proceed to the Trial of every such Issue with those Persons that were before impanelled and returned, and with those newly added and annexed to the said former Panel by Virtue of this Act, in such wise as they might or ought to have done, if all the said Jurors had been returned upon the Writ of *Venire facias* awarded to try the said Issue: And that all and every such Trial had, shall be as good and effectual in the Law, to all Intents, Constructions and Purposes, as if such Trial had been had and tried by twelve of the Jurors impanelled and returned upon the Writ of *Venire facias* awarded to try such Issue: And in case such Persons as the said Sheriff, Minister or Ministers, shall name and appoint, as is aforesaid, or any of them, after they shall be called, be present and do not appear, or after his or their Appearance do wilfully withdraw him or themselves from the Presence of the Court, That then such Justices or their Deputies, shall and may set such Fine upon every such Juror making Default, or wilfully withdrawing himself as aforesaid, as they shall think good by their Discretions; the said Fine to be levied in such Manner and Form as Issues forfeited and lost by Jurors for Default of their Appearance, as is provided by the Law and Custom of the said Counties of *Wales*, and Counties Palatine aforesaid, where such Issues are forfeited.

No. 31. 5 Elizabeth, c. 25.

Challenge to the Jurors newly named.

A Juror newly impanelled doth withdraw himself.

III. And be it further enacted by the Authority aforesaid, That where any Jury, that shall be returned by the Sheriff or other Minister or Ministers, shall be made full by the Commandment of the said Justices or their Deputies, by Virtue of this present Act, that yet nevertheless such Persons as were returned in the said Panel by the Sheriff or other Minister or Ministers, to try any such Issue that shall not appear, but make Default, shall lose the Issues upon them returned, in such wise as though the same Jury had remained for Default of Jurors.

The first Jurors making Default shall lose their Issues.

No. 31. 5 Elizabeth, c. 25.

Upon a reasonable Excuse, Jurors shall be discharged of Issues.

IV. Provided always, and be it further enacted, That upon a reasonable Excuse for the Default of Appearance of any Juror or Jurors, sufficiently proved before the Justices of the Great Sessions, or their Deputies, in the Countries and Counties Palatines aforesaid, at the Day of their Appearance, by the Oaths of two lawful and honest Witnesses, that the same Justices shall have Authority by their Discretions to discharge every such Juror of every such Forfeiture of Issues upon him returned; and that the said Sheriff or Sheriffs, or other Minister or Ministers, having Commandment by the said Justices to omit the returning of such Issues, as is aforesaid, upon such Juror or Jurors, shall be therein discharged of the Penalties aforesaid for the non-returning of the said Issues, and that yet notwithstanding the said Return to be good and effectual in the Law; any Law, Usage, Ordinance or Custom to the contrary notwithstanding.

If the Justices come not, the Jurors shall be discharged of their Issues.

V. Provided also, and be it enacted by the Authority aforesaid, That if the said Justices or their Deputies, afore whom any such Jury should appear in the Shires or Counties Palatines where such Issue is to be tried, do not come at the Day and Place appointed, That then every one of the same Jurors shall be discharged for forfeiting of any Issues upon him returned in the same Writ: And the Sheriff or other Minister or Ministers, shall be likewise discharged of the Penalties of this Estatute, for the non-returning of such Issues as are before limited in this Act; any Article or Sentence herein contained to the contrary notwithstanding.

The Sheriffs Forfeiture for returning of Issues upon a Juror not warned.

VI. And also be it further enacted by the Authority aforesaid, That if upon any such Writ of *Habeas corpora* or *Distringas*, Issues be returned upon any Hundredors, Juror or Jurors, by the Sheriffs or other Minister or Ministers to whom the Execution of the same Writ or Writs shall appertain, whereas the same Hundredors and Jurors, shall not be lawfully summoned, warned or distrained in that Behalf, That then every such Sheriff, or other Minister or Ministers aforesaid, shall lose for every such Offence so committed double so much as the said Issues returned upon such Hundredors or Jurors not lawfully summoned, warned or distrained, shall amount unto:

Who shall have the Forfeitures, and by what Means they shall be recovered.

The Moiety of all which Forfeitures contained in this present Act, other than the Issues to be returned upon the Jurors, as is aforesaid, shall be to the Queen our Sovereign Lady, her Heirs and Successors, and the other Half to him that will sue for the same by Action of Debt, Bill, Plaint or Information, in the Queen her Grace's great Court within the said County where such Forfeiture shall happen to be, before the said Justices, his or their Deputy or Deputies; in which no Wager of Law, Essoin or Protection shall be allowed ne admitted: Saving to all Manner of Persons, and Bodies Politick and Corporate, their Heirs and Successors, having lawful Right, Title and Interest, to have such Issues, to be before any such Justices or their Deputies at any Time or Times hereafter lost and forfeited, all such Right, Title and Interest as they or any of

them should or ought to have had to such Issues to be lost and forfeited, as though this Act had never been had or made. No. 31. 5 Elizabeth, c. 25.

VII. Provided also, That this Act, nor any Thing therein contained, shall not extend to any City or Town Corporate, or to any Sheriff, Minister or Ministers in the same, for the Return of any Inquest or Panel to be made and returned of Persons inhabiting in the said Cities or Towns Corporate, but that they and every of them shall and may return such Persons in every such Inquest or Panel, as before this Time they might and have been accustomed to do, and as if this Act had never been had or made, so that the same Sheriff, Minister or Ministers, return upon such Persons as shall be impanelled, such like and reasonable Issues as they ought to return; any thing in the same contained to the contrary notwithstanding. 2 and 3 Ed. 6. c. 32.

Returning of Inquests in Cities and Towns Corporate.

## No. 32.

### 18 Elizabeth, c. 8.—An Act for the appointing of Justices in the Shires of *Wales*.

No. 32. 18 Elizabeth, c. 8.

The Queen may appoint Justices of Assizes in Wales, and of what Things they may hold Pleas.

27 H. 8. c. 26. 34 & 35 H. 8. c. 26.

'WHEREAS by divers laudable Statutes, Usages and Laws of this Realm, for the good Government and Administration of Justice within the Principality and Dominions of *Wales*, and the County Palatine of *Chester*, it hath been established, used and enacted, among other Things, That there shall be holden and kept Sessions twice in every Year in every of the Shires in the said Dominion and Principality of *Wales*; that is to say, in the Shires of *Glamorgan*, *Brecknock*, *Radnor*, *Caermarthen*, *Pembroke*, the Town and County of *Haverford-west*, *Cardigan*, *Mountgomery*, *Denbigh*, *Flint*, *Caernarvon*, *Merioneth* and *Anglesey*, and in the said County Palatine of *Chester*; the which Sessions are called the King's Great Sessions: And that the Justice of *Chester* for the Time being shall hold and keep Sessions twice in every Year in the Shires of *Chester*, *Denbigh*, *Flint* and *Mountgomery*: And likewise that the Justice of *North Wales* shall hold and keep Sessions twice in every Year in every of the said Shires of *Caernarvon*, *Merioneth* and *Anglesey*: And that also one Person learned in the Laws of this Realm of *England*, by the Queen's Majesty to be appointed, shall be Justice of the Shires of *Radnor*, *Brecknock* and *Glamorgan*, and shall in like wise hold and keep Sessions twice in every Year in every of the same Shires: And that one other Person learned in the Laws of this Realm, to be appointed as is aforesaid, shall be Justice of the Shires of *Caermarthen*, *Pembroke* and *Cardigan*, and the Town and County of *Haverfordwest*, and shall likewise hold and keep Sessions twice in every Year in every of the said Shires: And that the said Persons or Justices, and every of them then being, or that thereafter should be, should have several Letters Patents and Commissions for their

No. 32.
18 Elizabeth, c. 8.

'Offices under the Great Seal of *England*, to be exercised by 'themselves or their sufficient Deputies, according to the Pur-'ports and Intents in the Ordinances specified:

The Benefits ensuing by the Administration of Justice in Wales, Cheshire, &c.

'II. Forasmuch as by the good Administration of Justice 'within the said Shires and Counties, the same Principality and 'Dominion of *Wales*, and the said County Palatine of *Chester*, are 'reduced to great Obedience of her Majesty's Laws, and the 'same greatly inhabited, manured and peopled, and for that all 'and all manner of Causes, Pleas, Actions, as well real, personal 'and mixt, as Treasons, Pleas of the Crown, Attaints, Con-'spiracies, Assizes, *Quare Impedit*, Appeals of Murder, Maims 'and Felony, and Trial upon all Murders, Manslaughters and 'Felonies whatsoever arising within the said several Circuits, 'are by the said Laws, Usages and Statutes impleadable, im-'pleaded and determinable before one only Justice, as is afore-'said: And for that many great and weighty Causes, Matters, 'Questions, Demurrers and Ambiguities in Law do thereupon 'daily arise, increase, and are like daily more and more to 'increase, within the said Shires, to the infinite Trouble of 'such one Justice within every of the said several Circuits, and 'to the great Delay and Hindrance of Administration of Jus-'tice:

To have one Judge overcharged with the hearing of many Causes, is a great Delay of Justice.

'III. For the better and more speedy Remedy whereof, 'her Majesty's Subjects of the said Principality and Dominion 'of *Wales*, and County Palatine of *Chester*, have made their 'most humble Petition and Suit to her Highness to have two 'Justices learned in the Laws in every of the said several 'Circuits: And forasmuch as some Question, Ambiguity and 'Doubt hath been heretofore made, whether her Highness by 'her Letters Patents under the Great Seal of *England* might or 'may authorise, constitute or appoint two Persons or more to be 'her Highness Justices in every of the said several Circuits, or 'grant Commission or Commissions of Association or Associa-'tions to or with every or any such several Justice and Justices, 'or no: And also whether after such Grant, the Administration 'of Justice in those Offices and Function done by two, may be 'sufficiently rewarded by Law, or no: For plain Explanation 'whereof, and for the better Redress and more speedy Admi-'nistration of Justice to be had touching the Premisses,' Be it declared, explained, enacted and established by the Queen's most excellent Majesty, by the Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, That the Queen's Highness, her Heirs and Successors, may and shall at her and their Will and Pleasure, have full Power, Prerogative and Authority, from Time to Time, to constitute, authorise, name or appoint two or more learned as aforesaid, in the Laws of this Realm, to be Justices of and for the said Counties of *Chester*, *Flint*, *Denbigh* and *Mountgomery*, and two or more learned, as aforesaid, to be Justices of *North Wales*, viz. of and for the said Shires of *Anglesey*, *Caernarvon* and *Merioneth*, and likewise two or more learned, as aforesaid, to be Justices

No. 32.
18 Elizabeth, c. 8.

of and for the said Circuits and Shires of *Radnor*, *Glamorgan* and *Brecknock*, and also two or more learned, as aforesaid, to be Justices of and for the said Circuit and Shires of *Cardigan*, *Caermarthen* and *Pembroke*, and the Town and County of *Haverfordwest*; any Law, Usage, Opinion or Statute to the contrary notwithstanding.

The Queen may grant Commissions of Association to any Persons learned, to be associate with Justices.

IV. And that her Majesty, her Heirs and Successors, may and shall at her and their good Will and Pleasure, from Time to Time, associate and grant Commission and Commissions of Association or Associations under the great Seal of *England* to any Person or Persons learned, as aforesaid, to be associate to or with every or any such several Justice or Justices for the Time being, of the said several Circuits and Counties aforesaid, or in any of the said Counties: And that all and every such two Justices or more, within every of the said several Circuits and Counties, and also that every such Justice or Justices, together with such Person or Persons associate (if any such Association or Associations shall happen to be, as aforesaid) during such Association, and after such Association ended, or without such Association, such Justice or Justices shall have the like full Power, Preheminence, Authority and Jurisdiction from henceforth, to all Intents, Constructions, Purposes and Effects, as any one Justice within any of the said Circuits or Shires aforesaid, now hath, or at any Time heretofore had or ought to have: and also shall have like Power, Authority, Preheminence and Jurisdiction to keep and hold the several Sessions aforesaid twice in every Year, in every of the said Shires within their several Circuits aforesaid, and to hear, determine, order, award, adjudge, receive, take Knowledge of, and execute all and singular Causes, Matters, Pleas and Assizes, Treasons, Murders, Felonies, Indictments, Appeals of Murder, Felony and Maims, Actions reals, personals and mixt, Suits, Plaints, Informations, Quarrels, Attaints, Conspiracies, *Quare impedit*, and all Actions grounded upon any Statute or Statutes, Writs, Processes, Returns, Essoins, Verdicts, Judgments, Fines, Acknowledges, Confessions, Warrants and Executions, Actions and Acts whatsoever, and to do, perform, observe, accomplish and make all and every other Act and Acts, Matter and Matters, Thing and Things whatsoever, in like and in as ample, beneficial, lawful and effectual Manner and Form, to all Constructions, Qualities, Intents and Purposes, as any of the now several Justices, or any one of the now Justice or Justices within the same several Circuit or Circuits, and Counties aforesaid, may, ought, hath or might lawfully do by Force of any Law, Usage or Statute heretofore had, made or used before the making of this Act; And that from henceforth all and singular Writs, Processes, Returns, Essoins, Verdicts, Judgments, Fines, Recoveries, Recognizances, Acknowledges, Confessions, Act and Acts, Thing and Things, Matter and Matters as aforesaid, had, made, taken, done, returned, heard, determined, awarded, adjudged or executed by or before any such two Justices or more, or any such Justice

Of what Things the two Justices, or they with the Associates, may hold Sessions.

No. 32. 18 Elizabeth, c. 8. or Justices, and Associate or Associates, as aforesaid, to be appointed, nominated, authorized or constituted as aforesaid, shall be allowed, taken, construed, expounded and adjudged as good, effectual, and available, to all Intents, Constructions and Purposes, as if the same had been had, made, taken, done, returned, heard, determined, awarded, adjudged or executed by or before any such one Justice, or one of the Justices now or late being Justice or Justices of the same Circuit, or several Circuits aforesaid; any Law, Usage, Statute, Act, Ordinance or Prescription to the contrary in any wise notwithstanding.

No. 33.

18 Elizabeth, c. 13.—An Act concerning Offices found within the Counties Palatine.

No. 34.

27 Elizabeth, c. 9.—An Act for Reformation of Errors in Fines and Recoveries in the twelve Shires of *Wales*, and Counties Palatine, and for Exemplification of Fines and Recoveries generally.

[Inserted Part II. Class X. No. 18.]

No. 35.

31 Elizabeth, c. 9.—An Act for Writs upon Proclamation and *Exigents* to be current within the County Palatine of *Durham*.

No. 35. 31 Elizabeth, c. 9. 'WHERE the Bishoprick of *Durham* is, and of long Time 'hath been, an ancient County Palatine of itself, in 'which Bishoprick the Queen's Writ hath not, or yet doth 'run; so that the Writ of Proclamation awarded upon any *Exigent* against any Person or Persons inhabiting within the same 'County, in any Action wherein Process of Outlawry doth lie, 'according to the Statute made in the sixth Year of the Reign of 'the late King *Henry* the Eighth, cannot be directed to any 6 H. 8. c. 4. 'Sheriff, or other Officer within the said Bishoprick, but unto 'the Sheriff of the County next adjoining unto the said 'Bishoprick; so that the Party dwelling within the said 'Bishoprick, against whom any such *Exigent* and Proclamation 'hath been or shall be awarded, hath not had, nor hereafter 'can have, any Knowledge of the same Suit or Process; by 'reason whereof many Persons inhabiting within the said 'Bishoprick, without Knowledge have been outlawed, and

'hereafter are like to be outlawed in like Manner, to their utter 'Undoings, if some speedy Remedy be not the sooner provi-'ded:'

No. 35.
31 Elizabeth, c. 9.

A Writ of Proclamation upon an Exigent against any Person dwelling in the Bishoprick of Durham.

II. Be it therefore, and for divers other good Considerations, enacted, ordained and established by the Authority of this present Parliament, That whensoever any Writ of *Exigent*, at any Time after the first Day of *April* next coming, shall be awarded at the Suit of our Sovereign Lady the Queen's Majesty, her Heirs and Successors, Kings or Queens of this Realm, or at the Suit or Suits of any other Person or Persons, Plaintiff or Plaintiffs, in any Action or Suit in any of the Courts of our said Sovereign Lady, her Heirs or Successors, Kings and Queens of this Realm, commonly called the King's Bench and the Common Pleas, against any Person or Persons dwelling within the said Bishoprick; that then immediately upon the awarding of every such *Exigent*, the Justice or Justices before whom any such Writ of *Exigent* upon such Suit or Action shall be sued, shall have full Power and Authority by virtue of this Act, to award one Writ of Proclamation according to the Tenor and Effect of Writs of Proclamation awarded upon *Exigents*, and commonly directed out of any of the said Courts into *London*, or into any other Shires of this Realm, against any Person or Persons dwelling in other Shire or Shires of this Realm where the Queen's Writ doth run, according to the Order and Form of the said Act made in the sixth Year of the Reign of the said late King, to be directed to the Bishop of *Durham* for the Time being, and during the Vacation of the Bishoprick, then to the Chancellor of the said Bishoprick or County Palatine for the Time being, where it shall happen the said Defendant, against whom any such Action shall be sued as is aforesaid, to be dwelling, and not to the Sheriff of any other Shire next adjoining to the said Bishoprick or County Palatine; any Law, Custom or Usage heretofore used to the contrary notwithstanding: And that every such Writ of Proclamation so to be hereafter awarded to such Bishop or Chancellor of the said Bishoprick or County Palatine, shall have the same *Teste* and Day of Return, as the *Exigents*, whereupon every such Writ of Proclamation shall be awarded, shall have: And that every such Bishop or Chancellor, to whom any of the said Writ or Writs of Proclamation shall be directed, shall by his or their Mandate directed to the Sheriff of the said County Palatine, cause Proclamation to be made of the same Writs of Proclamation, according to the Tenor of the same, and shall make true Returns of the same in such Court and Courts, and before such Justices, as the Tenor of the same Writ and Writs of Proclamation shall require and demand: And that all Outlawries hereafter to be promulged or pronounced against any Person or Persons, upon any such *Exigent* or *Exigents*, awarded against any Person or Persons dwelling within the said Bishoprick or County Palatine, and no Writs of Proclamation awarded in Form aforesaid to the Bishop or Chancellor aforesaid, where the Party Defendant shall be as is

The Bishop's Mandate to the Sheriff to make Proclamation.

No. 35. 31 Elizabeth, c. 9.

aforesaid dwelling, or not returned as aforesaid, to be clearly void, and of none Effect nor Force in the Law.

The Bishop of Durham shall have a Deputy in the King's Bench and Common Pleas. 23 H. 6. c. 9.

III. And be it further enacted by the Authority aforesaid, That every Bishop of the said Bishoprick for the Time being, and during the Vacation of the said Bishoprick the Chancellor of the said County Palatine for the Time being, shall have in every of the said Courts of the King's Bench and Common Pleas, one sufficient Deputy at the least, to receive all such Writs of Proclamations which shall be hereafter directed to every such Bishop or Chancellor of the said Bishoprick or County Palatine, for whom the same Deputy or Deputies shall be appointed, in like Manner and Form, and upon like Pains, as by the former Statutes and Laws of this Realm, the Sheriffs of other Shires or Counties within this Realm of *England* be bound to have in either of the said Courts; and that all such Writs of Proclamation as aforesaid, shall be delivered unto every such Deputy or Deputies of Record in the same Courts and either of them, and also like Fees shall be paid for making of every such Writ of Proclamation, and for enrolling the same of Record, as is limited in the same Statute made in the sixth Year of the said King *Henry* the Eighth.

The Forfeiture of the Bishop or Chancellor that doth not return the Proclamation.

IV. And be it further enacted and established by the Authority aforesaid, That if any such Writ or Writs of Proclamation hereafter to be directed to any Bishop or Chancellor of the said Bishoprick or County Palatine, be delivered unto any of the said Bishops for the Time being, or during the Vacation of the said Bishoprick to the Chancellor of the said County Palatine for the Time being, or to his or their Deputy or Deputies, in Manner and Form aforesaid; the same Bishop for the Time being, or during the Vacation of the said Bishoprick the said Chancellor of the said County Palatine for the Time being, do not make true Return of every such Writ and Writs of Proclamation to them directed, into such Court and Courts out of which the Writ or Writs of Proclamation shall be awarded, that for every such Default of Non-return, every such Bishop for the Time being, and during the Vacation of the said See the said Chancellor for the Time being, so failing to make due Return, shall lose and forfeit five Pounds; the one Half whereof shall be to the Queen, her Heirs and Successors, and the other Half thereof to any such Person or Persons as will sue for the same, in any Action of Debt to be grounded upon this Act, in any of the Queen's Courts of Record, wherein no Essoin, Protection or Wager of Law shall be allowed or admitted.

A Provision for the Bishop of Durham's other Liberties.

V. Provided always, That this Act, or any Thing herein contained, shall not in any wise extend or be prejudicial to any Bishop of the said Bishoprick of *Durham*, for or concerning such Liberties, Franchises or Privileges as belong to the same Bishop's Bishoprick or See, or to any Ministers or Officers of the same Bishoprick or County Palatine, otherwise or in any other Manner than by the true Meaning of this Act is before provided or declared; any Thing in this Act mentioned to the contrary notwithstanding.

VI. Provided also, That if any Person or Persons dwelling within the said Bishoprick or County Palatine, after the aforesaid first Day of *April*, shall be outlawed in any such Suit or Action as is aforesaid; that then all Writs of special *Capias Utlagatum*, single *Capias Utlagatum*, *Non molestandum*, and all other Process, for or against any Person or Persons so outlawed, shall and may from henceforth be directed from Time to Time to the Bishop of the said Bishoprick and County Palatine for the Time being, and during the Vacation of the said See to the Chancellor there for the Time being, who shall make like Writs and Process thereupon, and of like Effect, sealed with the Seal of their said Offices, to be directed to the Sheriff of the said County Palatine for the Time being, as heretofore hath been used and accustomed in such Cases.

No. 35. 31 Elizabeth, c. 9.

To whom Writs shall be directed against any Person outlawed in the said Bishoprick.

VII. Provided alway, and be it further enacted by the Authority aforesaid, That upon any Writ of Proclamation to be awarded by Virtue of this Act, and the Mandate thereupon to be made to the Sheriff, and the Execution thereof, there shall be but one only Fee taken, received or demanded for the same by the said Bishop, Chancellor, and Sheriff of the said County Palatine for the Time being.

One only Fee shall be taken for the Proclamation, Mandate and Execution.

## No. 36.

16 and 17 Charles II. c. 9.—An Act to impower the Chancellor of the Duchy to grant Commissions for taking Affidavits within the Duchy Liberties.

No. 36. 16 & 17 Ch. II. c. 9.

FOR the greater Ease and Benefit of the Inhabitants within the County Palatine of *Lancaster*, and other Places within several other Counties of this Kingdom within the Survey of the Court of Duchy Chamber at *Westminster*, in the taking of Affidavits in the Country, to be made use of and read in Causes depending and to be depending within the said Court; be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Chancellor of the said Duchy and County Palatine of *Lancaster* for the Time being, shall and may, by one or more Commission or Commissions from Time to Time, as need shall require, impower what and as many Persons as he shall think fit and necessary, within the said County Palatine and other Duchy Liberties, to take and receive all and every such Affidavit or Affidavits as any Person or Persons shall be willing and desirous to make before any of the Persons so impowered, in or concerning any Cause, Matter, or Thing depending, or hereafter to be depending, in the said Court of Duchy Chamber, as Masters of Chancery in Extraordinary do use to do; which said Affidavits shall be filed in the Office of the Clerk of the Court of the Duchy, and then be read and made use of in the said Court to all Intents and Purposes, as other Affidavits taken in the said Court now are.

No. 36. 16 & 17 Ch. II. c. 9.

II. Provided, That for the taking of every such Affidavit the Person or Persons so impowered and taking the same, shall for so doing receive only the Sum or Fee of Twelve-pence, and no more.

## No. 37.

19 Charles II. c. 5.—An Act extending a former Act concerning Replevins and Avowries, to the Principality of *Wales*, and the County Palatines.

[See first Class.]

## No. 38.

1 William and Mary, sess. 1. c. 27.—An Act for taking away the Court holden before the President and Council of the Marches of *Wales*.

No. 38. 1 Wm. & Mary, sess. 1. c. 27. 34 & 35 H. 8. c. 26.

'WHEREAS by the Statute made in the Thirty-fourth and Thirty-fifth Year of King *Henry* the Eighth, intituled "An Act for certain Ordinances in the King's Majesty's Dominion and Principality of *Wales*; it is enacted, That there shall be and remain a President and Council in the said Dominion and Principality of *Wales*, and the Marches of the same, with all Officers, Clerks and Incidents to the same, in Manner and Form as hath been heretofore used and accustomed; which President and Council shall have Power and Authority to hear and determine, by their Wisdoms and Discretions, such Causes and Matters as be, or hereafter shall be, assigned to them by the King's Majesty, as heretofore hath been accustomed and used; and forasmuch as the Proceedings and Decrees of that Court have, by Experience, been found to be an intolerable Burthen to the Subject within the said Principality, contrary to the Great Charter, the known Laws of the Land, and the Birthright of the Subject, and the Means to introduce an arbitrary Power and Government; and forasmuch as all Matters examinable or determinable, or pretended to be examinable or determinable, before the said Court of President and Council, may have their proper Redress in the ordinary Course of Justice, provided and settled in the several Shires within the said Principality and Dominion:' For Remedy whereof,

The Court of Marches taken away

II. Be it enacted by the King's and Queen's most excellent Majesties, and by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the before recited Clause in the said Statute, made in the thirty-fourth and thirty-fifth Year of King *Henry* the Eighth, shall be, and is hereby repealed: And that the said Court, commonly called the Court before the President and Council in the Marches of *Wales*, and all Jurisdiction, Power, and Authority, belonging unto, or exercised in the same Court, or by any the Judges, Officers, or Ministers

thereof, be clearly and absolutely dissolved, taken away and determined. No. 38. 1 Wm. & Mary, sess. 1. c. 27.

III. And be it hereby further enacted by the Authority aforesaid, That the Justices of the Great Sessions in *Wales* respectively, for the Time being, shall yearly nominate Three substantial Persons for each Shire in their respective Circuits, to be Sheriffs of the same, and shall certify their Names to the Lords of the most Honourable Privy Council *Crastino Animarum*, to the Intent the King's and Queen's Majesties, and the Survivor of them, and their Successors, being thereof advertised, may appoint One of the Persons so certified in every of the said Shires to be Sheriff for that Year. Sheriffs in Wales how chosen.

IV. And be it further enacted, That all Errors in Pleas personal within the said Principality or Dominion of *Wales*, shall be redressed by Writ of Error, in the same Manner as Errors in Pleas real and mixed are appointed to be redressed by the said Statute, made in the Thirty-fourth and Thirty-fifth Year of King *Henry* the Eighth. Errors in Pleas Personal.

V. Provided always, That no Judgments nor Decrees passed in the said Court before the first Day of *June*, One thousand six hundred eighty-nine, shall be by this Act repealed or annulled, but all and every of them shall remain in the same Force, and all Executions upon them in the same State, in which they were before the making of this Act; any Thing in this Act contained to the contrary notwithstanding. Commencement of the Act. The Courts at Westminster may award Execution on these Judgments, &c. by 9 & 10 W. 3. c. 16.

## No. 39.

11 and 12 William III. c. 9.—An Act for preventing of frivolous and vexatious Suits in the Principality of *Wales*, and the Counties Palatine.

No. 39. 11 & 12 William III. c. 9.

'WHEREAS by a Clause in an Act made in the twenty-second and twenty-third Years of King *Charles* the Second, intituled, "An Act for laying Impositions on Proceedings at Law," it is enacted, That in all Actions of Trespass, Assault and Battery, and other personal Actions, the Plaintiff in such Actions, in case the Jury shall find the Damages to be under the Value of forty Shillings, shall not recover or obtain more Costs of Suit than the Damages so found shall amount unto; which Clause having Reference to an Act made in the forty-third Year of Queen *Elizabeth*, for avoiding infinite Numbers of small and trifling Suits commenced in the Courts at *Westminster*, hath been understood to relate only to the said Courts;' Be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That as well the said Clause, and all the Powers and Provisions thereby, or by any other Law now in force, made for Prevention of frivolous and vexatious Suits in Law commenced in the Courts at *Westminster*, shall, from and after the

22 & 23 Car. 2. c. 9. § 136. 43 Eliz. c. 6. Clause in 22 & 23 C. 2. c. 9. to extend to the Courts of Great Sessions for Wales, Chester, &c.

No. 39. 11 & 12 William III. c. 9.

first Day of *May*, which shall be in the Year of our Lord one thousand seven hundred, be extended to, and be of the same Force and Efficacy in all such Suits to be commenced or prosecuted in the Court of Great Sessions for the Principality of *Wales*, the Court of Great Sessions for the County Palatine of *Chester*, the Court of Common Pleas for the County Palatine of *Lancaster*, and the Court of Pleas for the County Palatine of *Durham*, as fully and as amply, as if the said Courts had been mentioned therein.

No Sheriff, &c. in Wales, &c shall hold Persons to special Bail, unless Cause of Action be 20l.

'II. And whereas the holding of Persons inhabiting within the said Principality of *Wales*, and Counties Palatine, to 'special Bail in small Actions, is oppressive and vexatious to 'the Subject:' For Remedy whereof, Be it further enacted by the Authority aforesaid, That no Sheriff or other Officer within the said Principality or Counties Palatine, upon any Writ or Process issuing out of any of his Majesty's Courts of Record at *Westminster*, shall hold any Person to special Bail, unless an Affidavit be first made in Writing, and filed in that Court, out of which such Writ or Process is to issue, signifying the Cause of Action, and that the same is twenty Pounds and upwards; and where the Cause of Action is twenty Pounds and upwards, Bail shall not be taken for more than the Sum expressed in such Affidavit.

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## No. 40.

P. 4 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice.

No. 40. 4 Anne, c. 16.

Act to extend to all Suits for the King's Debts, &c.

XXIV. AND be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, this Act, and all the Statutes of Jeofails shall extend to all Suits in any of her Majesty's Courts of Record at *Westminster*, for Recovery of any Debt immediately owing, or any Revenue belonging to her Majesty, her Heirs or Successors; and shall also extend to all Courts of Record in the Counties Palatine of *Lancaster*, *Chester*, and *Durham*, and the Principality of *Wales*, and to all other Courts of Record within the Kingdom.

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## No. 41.

P. 8 George I. c. 25.—An Act for supplying some Defects in the Statute of the twenty-third of King *Henry* the Eighth, intituled, "An Act for Obligations to be taken by two Chief Justices, the Mayor of the Staple, and the Recorder of *London*, and for setting down the Time of signing Judgments in the Principality of Wales and Counties Palatine.

No. 41. 8 George I. c. 25.

'VI. AND whereas the Provision which by an Act of Parliament made in the twenty-ninth Year of the 'Reign of King *Charles* the Second, intituled, "An Act for

'preventing of Frauds and Perjuries," was made for setting 'down the Day of the Month and Year of signing Judgments 'in his Majesty's Courts of *Westminster*, hath proved very beneficial to Purchasers, but hath not yet been extended to the 'Courts of the Principality of *Wales*, or of the Counties Palatine:' Be it therefore enacted by the Authority aforesaid, That from and after the twenty-fourth Day of *June* one thousand seven hundred and twenty-two, any Judge or Officer of any of the Courts of Great Session in the Principality of *Wales*, or Courts of Session in the Counties Palatine of *Chester*, *Lancaster* and *Durham*, that shall sign any Judgments, shall at the signing the same, without Fee for doing the same, set down the Day of the Month and Year of his so doing, upon the Paper Book, Docket or Record which he shall sign, which Day of the Month and Year shall be also entred upon the Margent of the Roll of the Record where the said Judgment shall be entred, and that such Judgments, as against Purchasers *bona fide* for valuable Consideration of Lands, Tenements or Hereditaments to be charged thereby, shall in Consideration of Law be Judgments only from such Times as they shall be so signed, and shall not relate to the first Day of the Session whereof they are entred, or the Day of the Return of the Original or filing the Bail; any Law, Usage or Course of any Court to the contrary notwithstanding.

No. 41. 8 George I. c. 25.

29 Car. 2. c. 3. sect. 14.

How Judgment shall be signed in the Courts of the Grand Session in Wales, and in the Courts of Session in the Counties Palatine, and from what Time they shall relate.

## No. 42.

6 George II. c. 14.—An Act for the more effectual preventing frivolous and vexatious Arrests, and for the more easy Recovery of Debts and Damages, in the Courts of Great Sessions in the Principality of *Wales*, and in the Court of Assize in the County Palatine of *Chester*, and for the obviating a Doubt which has arisen upon an Act made in the fourth Year of his present Majesty's Reign, intituled, "An Act that all Proceedings in Courts of Justice, within that Part of *Great Britain*, called *England*, and in the Court of Exchequer in *Scotland*, shall be in the *English* Language," so far as the same Act doth or may relate to the Courts of Justice holden within the said Principality, and for explaining and amending the said Act.

'WHEREAS in and by an Act made in the fifth Year 'of his present Majesty's Reign, intituled, "An Act 'to explain, amend and render more effectual an Act made 'in the twelfth Year of the Reign of his late Majesty King '*George* the First, intituled, "An Act to prevent vexatious 'Arrests," it is (*inter alia*) enacted, That where the Cause 'of Action should not amount to the Sum of ten Pounds or

No. 42. 6 George II. c. 14.

5 Geo. 2. c. 7.
12 Geo. 1. c. 29.

No. 42.
6 George II. c. 14.

'upwards, in any Superior Court, the Writ, Process, Declaration and all other Proceedings should be in the English Tongue, and written in Words at length, in a common legible Hand and Character, and the Defendant or Defendants in such Cases (a Copy of such Process in *English* having been served, as by the said Act is directed) shall appear at the Return thereof, or within eight Days after such Return: And whereas the Courts of Great Sessions in the Principality of *Wales*, and the Court of Assize in the County Palatine of *Chester*, are held only for and during the Space of six Days,' Therefore for the more effectual and speedy Determination of all Actions personal, to be commenced in the said Courts of Great Sessions, and the said Court of Assize respectively, where the Debt or Damages expressed in the said Process, or declared for, do not amount to the Sum of ten Pounds, Be it enacted therefore by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in all such personal Actions where the Debt or Damages as aforesaid, shall not amount to the Sum of ten Pounds, to be commenced in the said Courts of Great Sessions and Assize, and where the Plaintiff or Plaintiffs, in such Action or Actions, shall sue out an original Writ or Process, and serve the Defendant or Defendants with a true Copy thereof, by a literate Person, at least eight Days before the Commencement of the said Courts of Great Sessions and Assize respectively, and shall cause on every Copy of such Process to be written the Notice in the said Act specified and directed, the Defendant or Defendants in such Cases shall appear at the Return of such original Writ or Process, or at or before the third Court to be held in the same respective Courts of Great Sessions and Assize, and in case the said Defendant or Defendants shall not appear at the Return of the said original Writ or Process, or at or before the said third Court, that then it shall and may be lawful to and for the Plaintiff or Plaintiffs, or his or their Attorney, upon Affidavit being made and filed in the proper Court, of the personal Service of such Writ or Process as aforesaid (which said Affidavit shall be filed in the said Court, and for the filing whereof there shall be paid the Sum of one Shilling to the proper Officer, and no more) to enter an Appearance for such Defendant or Defendants, and to proceed thereon as if the Defendant or Defendants had entred his, her, or their Appearance to such Action or Actions; any Law or Usage in the said Courts of Great Sessions or of Assize to the contrary notwithstanding.

In personal Actions under 10l. an original Writ and Service, &c.

and Defendant's Non-appearance at the third Court.

Plaintiff, &c. on Affidavit of Service, may enter Appearance for him.

5s. only for Copy and Service.

II. Provided always, no Attorney, Bailiff or other Person shall have, take, charge or demand more than the Sum of five Shillings for the making and serving a Copy of such original Writ or Process issuing out of such Courts of Great Sessions or of Assize, on such Defendant or Defendants respectively as aforesaid.

'III. And whereas Doubts have arisen whether an Act made in the fourth Year of his present Majesty's Reign, intituled, "An Act that all Proceedings in Courts of Justice within that Part of *Great Britain* called *England*, and in the Court of Exchequer in *Scotland*, shall be in the *English* Language," doth extend to the said Courts of Great Sessions and other Courts in the Principality of *Wales*, the said Courts of Great Sessions, and the said other Courts in the said Principality, not being therein mentioned:' For the removing and obviating of such Doubts, Be it further enacted, and it is hereby declared, That the said last mentioned Act, and all Clauses and Directions therein, shall be deemed and taken, and is and are hereby directed to be deemed and taken to extend to the said Courts of Great Sessions, and all other Courts within the said Principality of *Wales*, in as large, ample and beneficial a Manner as if the said Courts of Great Sessions, and the said other Courts in the said Principality had been particularly mentioned and expressed in the said Act.

No. 42.
6 George II. c. 14.

4 Geo. 2 c. 26. extended to Wales.

IV. And it is hereby further enacted, That where any Person or Persons shall offend against the said last mentioned Act in the said Courts of Great Sessions, or the said other Courts in *Wales*, that the Penalty expressed in the said Act to be forfeited and paid for such Offence, shall and may be sued for and recovered by such Person who shall sue for the same, by Action of Debt, Bill, Plaint or Information, either in any of his Majesty's Courts of Record in *Westminster*, as by the said Act is directed, or in the Court of Great Sessions held for the County where the same Offence shall be committed, wherein no Essoign, Protection or Wager of Law, or more than one Imparlance shall be allowed.

Penalties for Offences there against the said Act, where to be recovered.

V. And be it further enacted by the Authority aforesaid, That all Writs, Process and Returns thereof, and Proceedings thereon, and all Pleadings, Rules, Orders, Indictments, Informations, Inquisitions, Presentments, Verdicts, Prohibitions, Certificates, Patents, Charters, Pardons, Commissions, Records, Judgments, Statutes, Recognizances, Bonds, Rolls, Entries, Fines and Recoveries, and all Proceedings relating thereunto, and all Proceedings of Courts Leet, Courts Baron and Customary Courts, and all Copies thereof, and all Proceedings whatsoever, in any Courts of Justice within *England*, *Wales*, and the Town of *Berwick upon Tweed*, and in the Court of Exchequer in *Scotland*, and which concern the Law and Administration of Justice, may from and after the twenty-fifth Day of *March* one thousand seven hundred and thirty-three, be written or printed, in a common legible Hand and Character, and with the like Way of Writing or Printing, and with the like Manner of expressing Numbers by Figures, as have been heretofore or are now commonly used in the said Courts respectively, and with such Abbreviations as are now commonly used in the *English* Language, and that no Penalty or Punishment shall be incurred, by Virtue of the said recited Act, for any other Offence than for Writing or Printing any of

No Penalty to be incurred for Abbreviations, nor technical Terms, &c.

No. 42.
6 George II. c. 14.

the Proceedings, or other the Matters and Things above mentioned, in any Hand commonly called *Court Hand*, or in any Language except the *English* Language; nor shall any such Penalty or Punishment be extended to the expressing the proper or known Names of Writs or other Process or Technical Words in the same Language as hath been commonly used, so as the same be written or printed in a common legible Hand and Character, and not in any Hand commonly called *Court Hand*; and that all Prosecutions for Offences against the said Act shall be commenced within three Months after the same shall be committed; and that the several Officers in the several Offices of the King's and the Lord Treasurer's Remembrancer, and in the Offices of the Clerk of the Pipe, and the Clerk of Estreats in his Majesty's Court of Exchequer, shall and may write and send out, in Process for his Majesty's Service, Rolls or Schedules of all such Debts as have been forfeited and became due and owing to his said Majesty, before the said twenty-fifth day of *March* one thousand seven hundred and thirty-three, in the same Manner they used to do, provided the Writ or Process to be annexed to the said Rolls or Schedules shall be in the *English* Tongue, and in a common legible Hand, and according to the Direction of the said recited Act: any Thing in the said Act made in the fourth Year of his present Majesty's Reign, or any other Law or Statute to the contrary thereof in any wise notwithstanding.

Prosecutions within three Months.

Process of the Pipe Office, &c. may be issued as formerly.

## No. 43.

6 George II. c. 37. — An Act for making perpetual the several Acts therein mentioned, for the better Regulation of Juries; and for impowering the Justices of Session or Assizes for the Counties Palatine of Chester, Lancaster, and Durham, to appoint a Special Jury in Manner therein mentioned; and for continuing the Act for regulating the Manufacture of Cloth in the West Riding of the County of *York* (except a Clause therein contained); and for continuing an Act for the more effectual punishing wicked and evil disposed Persons going armed in Disguise, and for other Purposes therein mentioned; and to prevent the cutting or breaking down the Bank of any River or any Sea Bank; and to prevent the malicious cutting of Hop-binds; and for continuing an Act made in the thirteenth and fourteenth Years of the Reign of King *Charles* the Second, for preventing Theft and Rapine upon the Northern Borders of *England*; and for reviving and continuing certain Clauses in two other Acts made for the same Purpose.

[See Class IX. No. 63.]

No. 44.

17 George II. c. 7. — An Act for taking and swearing Affidavits to be made use of in any of the Courts of the County Palatine of *Lancaster*.

No. 44. 17 George II. c. 7.

' WHEREAS it hath been found inconvenient, That no ' Person or Persons is or are empowered to grant ' Commissions for the taking and swearing of Affidavits, to be ' read and made use of in the Court of *Chancery* of and for the ' County Palatine of *Lancaster*, and in the Courts of Session ' held in and for the said County Palatine before his Majesty's ' Justices, as well of Pleas of the Crown, as of Common Pleas, ' and all Manner of Pleas whatsoever within the said County ' Palatine, in the several Matters and Causes depending in the ' said Courts respectively;' For Remedy whereof, be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Chancellor of the Dutchy, and County Palatine of *Lancaster*, or his Vice Chancellor of the said County Palatine, for the Time being, shall and may, by one or more Commission or Commissions under the Seal of the said County Palatine, from Time to Time, as Need shall require, impower what and as many Persons as shall be thought fit and necessary to take and swear all and every such Affidavit and Affidavits, as any Person or Persons shall be willing and desirous to make before any of the Persons so impowered, in or concerning any Cause, Matter or Thing depending, or hereafter to be depending, or any wise concerning any of the Proceedings to be in any of the said Courts, as Masters of *Chancery* in extraordinary do use to do; which said Affidavits taken as aforesaid, shall be filed in the several and respective Offices of the said Courts the same do concern: and the same shall and may be read and made use of in the said respective Courts, to all Intents and Purposes, as other Affidavits taken in the said Courts now are; and that all and every Affidavit and Affidavits taken as aforesaid, shall be of the same Force as Affidavits taken in the said respective Courts now are; and all and every Person and Persons forswearing him, her or themselves in such Affidavit or Affidavits, shall incur and be liable unto the same Penalties, as if such Affidavit or Affidavits had been made and taken in open Court: Which said Commissions shall be made out by the Cursitors of the said County Palatine, upon a Fiat or Warrant from the said Chancellor or Vice Chancellor; and the said Cursitors shall cause Entries to be made in a Book to be kept for that Purpose, of the Names of the Persons to whom such Commissions are from time to time granted, and the respective Times when issued; and the following Fees shall be paid for each Commission, and no more; to wit, the Sum of two Shillings for the Fiat or Warrant, the Sum of four Shillings

Chancellor of the Duchy may give Commissions to take Affidavits.

Fees for taking Commissions.

No. 44.
17 George II. c. 7.

for making out the said Commission, besides the King's Duty, and the Value of the Parchment, and the Sum of four Shillings for Sealing the same; and every Commissioner, or Person so impowered, shall take and receive for the Swearing of every Affidavit before him, the Sum or Fee of one Shilling and no more.

Proviso.

II. Provided always, and it is hereby declared, That such Officers of the said Courts respectively as have heretofore taken or sworn Affidavits, shall and may continue so to do in the same Manner as if this Act had not been made.

## No. 45.

20 George II. c. 42. — An Act to enforce the Execution of an Act of this Session of Parliament, for granting to his Majesty several Rates and Duties upon Houses, Windows, or Lights.

[I. Commissioners who have omitted, impowered to meet and act at any other Time.—Acts of the Commissioners confirmed.]

[II. Two Commissioners may appoint Assessors. — Persons neglecting to appear, or take the Oaths, or serve the Office, to pay 5l.]

No. 45.
20 George II. c. 42.
Wales and Berwick included.

III. AND it is hereby further declared and enacted by the Authority aforesaid, That in all Cases where the Kingdom of *England*, or that Part of *Great Britain* called *England*, hath been, or shall be mentioned in any Act of Parliament, the same has been and shall from henceforth be deemed and taken to comprehend and include the Dominion of *Wales*, and Town of *Berwick* upon *Tweed*.

[IV. Quakers appointed Assessors, to make and subscribe the Declaration of Fidelity.—Certificates verified upon Affirmation to be valid.]

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## No. 46.

P.

22 George II. c. 46. — An Act to continue several Laws * * * * * * * * * * * * and for the more frequent Return of Writs in the Counties Palatine of Chester and Lancaster; and for other Purposes.

No. 46.
22 George II. c. 46.

'XXXV. WHEREAS all Writs relating to Actions depending in the Court of Session of *Chester*, or in 'the Court of *Common Pleas*, held in and for the County Palatine of *Lancaster*, are returnable at the Great Sessions and 'Sessions of Assizes held respectively for the said Counties, 'and at no other Time, by which Means no Action that is commenced in the said Courts can be brought to Issue, and tried, 'before the next Session or Session of Assizes but one after 'such Action is commenced at the soonest, which is usually near 'a Year, and a great Delay to the Suitors of the said Courts,

No. 46.
22 George II. c. 46.

Regulations in the Returns of Writs in the Court of Session of Chester, and the Court of Common Pleas of Lancaster.

'and many other Inconveniencies do attend the Want of more 'frequent Returns of Writs in the said Courts:' For Remedy whereof, and for the greater Ease and Benefit of the Suitors in the same, Be it further enacted by the Authority aforesaid, That from and after the twenty-ninth Day of *September* one thousand seven hundred and forty-nine, all Writs of *Capias*, and other mesne Process, to answer relating to any Action or Suit, to be brought or commenced in the said Courts of Session for the said County of *Chester*, and Court of *Common Pleas* for the said County of *Lancaster*, that shall bear Teste in the preceding Session or Sessions of Assizes respectively, shall and may be made returnable before his Majesty's Justices of the said Sessions at *Chester*, or Sessions of Assizes for the County of *Lancaster*, on the first *Wednesday* of any Month in each of the two Vacations annually, betwixt the said Session or Sessions of Assizes, or at the first Day of the next Session or Sessions of Assizes respectively, at the Election of the Plaintiff or Plaintiffs, his, her, or their Attorney, who shall sue out the same; and that all such Writs or Process, which shall issue out of the said Courts respectively, returnable in the Vacations, as aforesaid, and whereon or wherewith the Defendant or Defendants shall be arrested or served with a Copy or Copies, such Defendant or Defendants shall appear and file special Bail, or enter a common Appearance, as the Case shall require, on the Day of such Return, or within eight Days next after; and in case of Neglect in bailable Actions, the Sheriff, Under-sheriff, or other Officer, shall at the Request and Costs of the Plaintiff or Plaintiffs, in such Action or Suit, his, her, or their Attorney or Agent, assign to such Plaintiff or Plaintiffs, the Bail Bond taken for the Defendant's Appearance upon the Arrest, by Indorsement and Attestation under his Hand in the Presence of two or more credible Witnesses; and the Plaintiff or Plaintiffs in such Action, after such Assignment made, may bring an Action or Suit upon such Bail Bond, in his or their own Name or Names; and the said Courts may, by Rule or Rules thereof respectively, give such Relief to the Plaintiffs and Defendants in the original Action, and to the Bail, so sued upon the Bail Bond, as is agreeable to Justice and Reason; and in case of Service, the Copy of Writs or Process, returnable in the Vacation Time as aforesaid, and the Defendant or Defendants so served therewith, shall not appear at the Return of such Writ or Process, or within eight Days next after the Return thereof as aforesaid, it shall and may be lawful to and for the Plaintiff or Plaintiffs, in such Action, upon Affidavit being made and filed with the Prothonotary of the said Courts respectively, or his Deputy, of the personal Service of such Process as aforesaid, to enter a common Appearance or Appearances for the Defendant or Defendants, and to proceed thereon as if such Defendant or Defendants had entered his, her, or their Appearance; and that all Writs which shall be made returnable in the said Courts respectively, on such Return Days as aforesaid, shall and may (in case the Plaintiff or Plaintiffs declare accord-

No. 46. 22 George II. c. 46.

ing to the Practice of the said Courts respectively), be proceeded upon in like Manner as if the same had been made returnable at the preceding Session or Session of Assizes for the said Counties Palatine respectively; any Law, Statute, Usage, or Custom to the contrary thereof in any wise notwithstanding.

## No. 47.

13 George III. c. 51.—An Act to discourage the Practice of commencing frivolous and vexatious Suits in his Majesty's Courts at *Westminster*, in Causes of Action arising within the Dominion of *Wales*; and for further regulating the Proceedings in the Courts of Great Sessions in *Wales*.

No. 47. 13 George III. c. 51.

WHEREAS, to the intolerable Vexation and Charge of his Majesty's Subjects in the Dominion of *Wales*, it hath been the Practice to commence trifling and frivolous Suits in the Courts at *Westminster*, upon Causes of Action arising within the said Dominion of *Wales*: (1.) In order that the

(1.) The Origin of the Courts of Westminster assuming Jurisdiction over Causes in Wales, and directing the Trial in an adjoining English County, does not distinctly appear; I think the Truth most probably is, that it was founded in mere Usurpation, and, like many other Usurpations of Jurisdiction, supported by Fictions; but the Practice has actually existed for a great Length of Time, and is in many Respects very beneficial.

The Right of issuing a Latitat into Wales has been the Subject of considerable Controversy. In Lempley *v.* Thomas, 1 Wils. 193, the Question was raised by Demurrer, and was argued three Times: during the Progress of the Arguments the Court seemed sufficiently disposed to adhere to the Jurisdiction, but finally decided against it, without saying more than these Words —"*Breve Domini Regis de Latitat non currit in Walliam.*" In Mr. Hargreave's Law Tracts, p. 377, there is a very learned and elaborate Argument, occasioned by the Discussion of this Case, and apparently written before the Decision of it, in Opposition to the Jurisdiction. In Lloyd *v.* Jones, Doug. 213, n. upon a subsequent Discussion of the Question, Yates J. intimated a decided Opinion in favour of the Jurisdiction of the Court; but the Case stood over to be argued again; when the Defendant declining (in all due Courtesy) a further Argument, Judgment was given for the Plaintiff.

And in Penny *v.* Jones, Doug. 213, Application being made for a Rule to shew Cause why an Exoneretur should not be entered on the Bail Piece, the Defendant having been arrested in Wales, the Court refused the Rule, saying, that the proper Way, if the Court had not Jurisdiction, was to plead in Abatement; and Buller said, that since the Case in Wilson the contrary Doctrine had been held in several Cases, particularly in the Case already mentioned, where Yates J. had considered the Case very fully, and delivered a solemn Argument upon it. The Reporter observes, that the present Act seems very clearly to recognise the Jurisdiction, which is certainly the Case, however disputable in point of Argument, independently of such Recognition, the Question might have been. In Ambrose *v.* Rees, 11 East, 370, the Court refused to set aside a Trial at Monmouth, on a Venue in South Wales, for Irregularity; assigning as a Reason, that the Defendant did not object at the Time; but in Goodright ex. dem. Richards *v.* Williams, 2 M. & S. 270, the Court arrested the Judgment, after a Trial in Salop, upon a Venue in Cardiganshire, upon the Ground that the Practice had always been to consider Herefordshire as the next adjoining County to South Wales, and Salop to North Wales. This Decision has always appeared to me to stand on very unsatisfactory Grounds, in treating that which had been a mere Course and Habit of Practice, as a

No. 47.
13 George III. c. 51.

'same may be tried in the nearest adjoining *English* County to 'that Part of the Dominion of *Wales* in which the Cause of 'Action has arisen, to discourage the like Practices for the 'future;' may it please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of *January*, one thousand seven hundred and seventy-four, in case the Plaintiff in any Action upon the Case for Words, Action of Debt, Trespass on the Case, Assault and Battery, or other personal (2.) Action, where the Cause of such Action shall arise within the Dominion of *Wales*, and which shall be tried at the Assizes, at the nearest *English* County (3.) to that Part of the said Dominion of *Wales*, in which the Cause of Action shall be laid to arise, shall not recover, by Verdict, a Debt or Damages to the Amount of ten Pounds; in such Case, if the Judge who tried the Cause on Evidence appearing before him, shall certify on the Back of the Record of *Nisi Prius*, that the Defendant or Defendants was or were resident in the Dominion of *Wales* at the Time of the Service of the Writ, or other mesne Process served on him, her, or them, in such Action, on such Fact being suggested on the Record or Judgement Roll, a Judgement of Nonsuit shall be entered against the Plaintiff, and such Defendant or Defendants shall be intitled to, and have like Judgement and Remedy thereon, to recover such and the like Costs, against the Plaintiff or Plaintiffs, in every such Action, as if a Verdict had been given by the Jury for the Defendant or Defendants, unless the Judge, before whom such Cause shall be tried, shall certify on the Back of the Record, that the Freehold or Title of the Land mentioned in the Plaintiff's Declaration was chiefly in question, or that such Cause was proper to be tried in such *English* County.

In case Plaintiff shall recover Damages to Amount of 10l.; Defendant shall be intitled to Judgement and Remedy thereon, &c.

II. And, in order to prevent transitory Actions, where the Cause of Action does not amount to ten Pounds, arising within the Principality of *Wales*, from being brought in any of his Majesty's Courts of Record out of the said Principality, be

Actions within Wales brought in Courts of Record out of the said Principality &c.

Rule of Law; a Thing which the Courts themselves have in some Instances strongly objected to. The Venvie is also directed into the particular County upon a Suggestion of its being the adjoining County as a Matter of Fact; and it is perfectly anomalous to treat the same Subject as one which is to be stated upon Suggestion as Matter of Fact, and also as one which is to be judicially recognized as Matter of Law. The Fact of its being general to try Issues in South Wales in the County of Hereford, may be sufficiently accounted for from that being, in Fact, the nearest County to a great Part of South Wales, as Salop is confessedly the nearest County, into which the King's Writ runs, to the greater Part of North Wales: but, at any Rate, a Deviation from an established Course of Practice would, in such Case, have been more regularly corrected by an Application to a Judge, than by treating it as an Error upon the Record.

(2.) Covenant for not levying a Fine is a personal Action within the Act; Davis *v.* Jones, 1 N. R. 267.

(3.) This extends to an Attorney suing by Attachment of Privilege, although he might have exercised his Privilege by laying the Venue in Middlesex; Evans *v.* Jones, 6 T. R. 500.

No. 17. 13 George III. c. 51.

it further enacted, That in all transitory Actions arising within the said Principality, which from and after the first Day of *January*, one thousand seven hundred and seventy-four, shall be brought in any of his Majesty's Courts of Record out of the said Principality of *Wales*, and the Venue therein, shall be laid in any County or Place out of the said Principality, and the Debt or Damages found by the Jury, shall not amount to the Sum of ten Pounds, and it shall appear upon the Evidence given on the Trial of the said Cause, that the Cause of Action arose in the said Principality of *Wales*, and that the Defendant or Defendants were resident in the Dominion of *Wales* at the Time of the Service of any Writ, or other mesne Process served on him, her, or them, in such Action, and it shall be so certified, under the Hand of the Judge who tried such Cause, upon the Back of the Record of *Nisi Prius* (on such Facts being suggested on the Record or Judgement Roll), a Judgement or Nonsuit shall be entered thereon against the Plaintiff, and the Plaintiff or Plaintiffs shall pay to the Defendant or Defendants, in such Action, his or their Costs of Suit; and the Defendant and Defendants shall have like Remedy to recover the same as in the Case of a Verdict given for the Defendant or Defendants in such Action; and, in the Taxation of all Costs allowed and given to the Defendant or Defendants by and in pursuance of this Act, the proper Officer shall allow to the Plaintiff or Plaintiffs, out of the Defendant's Costs, the full Sum given by the Verdict to the Plaintiff or Plaintiffs for his or their Debt or Damages; and, although no Judgement shall be entered for the Plaintiff or Plaintiffs upon such Verdict, yet nevertheless such Verdict, without any Judgement entered thereon, shall be an effectual Bar to any Action or Actions commenced by the Plaintiff or Plaintiffs for the same.

34 & 35 Hen. 8.

'III. And whereas by an Act made in the thirty-fourth 'and thirty-fifth Years of the Reign of his late Majesty King '*Henry* the Eighth, intituled, "An Act for certain Ordinances 'in the King's Dominion and Principality of *Wales*," it is '(amongst other Things) enacted, That there shall be holden 'and kept Sessions, twice in every Year, in every of the 'Shires of the said Dominion and Principality of *Wales*, the 'which Sessions shall be called "The King's Great Sessions in '*Wales*;" and that the Justice of *Chester* shall hold and keep 'Sessions, twice in every Year, in the Shires of *Denbigh*, '*Flint*, and *Montgomery*; and likewise that the Justice of '*North Wales* shall hold and keep Sessions, twice in every 'Year, in the Shires of *Caernarvon*, *Merioneth*, and *Anglesey*; 'and also that one Person learned in the Laws of this Realm, 'by the King's Majesty to be named and appointed, shall be Jus-'tice of the Shires of *Radnor*, *Brecknock*, and *Glamorgan*; and 'shall likewise hold and keep Sessions, twice in every Year, 'in every of the same Shires; and likewise that one other 'Person, learned in the Laws of this Realm, to be appointed 'as aforesaid, shall be Justice of the Shires of *Caermarthen*, '*Pembroke*, and *Cardigan*, and shall in like wise hold and

'keep Sessions, twice in every Year, in every of the same 'Shires: and that the said Persons, or Justices, and every of 'them, then being, or that hereafter shall be, shall have several Letters Patents and Commissions for their Offices under the 'King's Great Seal of *England*, to be exercised by themselves, 'or their sufficient Deputies, according to the Purposes and 'Intents in the said Ordinances specified: And whereas by 'one other Act, made in the eighteenth Year of the Reign of 'her late Majesty Queen *Elizabeth*, intituled, "An Act for the 'appointing of Justices in the Shires of *Wales*, it is (amongst 'other Things) enacted, That the Queen's Highness, her 'Heirs and Successors may and shall have full Power and 'Authority, from Time to Time, to constitute, name, or 'appoint, two or more Persons, learned in the Laws of this 'Realm of *England*, to be Justices of and for the said Counties 'of *Chester*, *Flint*, *Denbigh*, and *Montgomery*; and two or 'more, learned as aforesaid, to be Justices of *North Wales*; '(*videlicet*,) of and for the said Shires of *Anglesey*, *Caernarvon*, 'and *Merioneth*; and likewise two or more, learned as aforesaid, to be Justices of and for the Circuits and Shires of '*Radnor*, *Glamorgan*, and *Brecknock*; and also two or more, 'learned as aforesaid, to be Justices of and for the Circuits 'and Shires of *Cardigan*, *Caermarthen*, *Pembroke*, and the 'Town and County of *Haverford West*: And whereas the 'exercising the Power of appointing Deputies by such Justices 'may be attended with Inconvenience; for preventing thereof:' be it further enacted, That no Justice now appointed, or at any Time hereafter to be appointed, of or for the said County of *Chester*, or of or for any County, Circuit, or Shire, within the said Principality or Dominion of *Wales*, shall have any Power or Authority of exercising his Office by Deputy, save and except for the Purpose of calling and adjourning any Court or Courts, and receiving any Motion or Motions appointed, or especially directed to be made at such Court, and for the further Purpose of taking and proclaiming Fines and arraigning Recoveries, in such Court or Courts of each respective Great Session and Assizes, within the Circuit of such Justice: any Law, Statute, or Usage to the contrary notwithstanding.

No. 47. 13 George III. c. 51.

18 Eliz.

Welsh Justices not to have a Deputy, &c.

IV. Provided always nevertheless, and be it further enacted by the Authority aforesaid, That from henceforth it shall and may be lawful to and for the several and respective Justices of and for the said several and respective Circuits and Counties for the Time being, from Time to Time, and at any Time, as Occasion may require, by Writing under the Hand and Seal, or Hands and Seals, of such Justice or Justices respectively, to nominate, constitute, or appoint, any Person or Persons to be his or their Deputy or Deputies, for the Intent and Purpose of calling and adjourning any Court or Courts, and receiving any Motion or Motions, appointed or especially directed to be made at such Court, and for the further Purpose of taking and proclaiming Fines, and arraigning Recoveries in

No. 47. 13 George III. c. 51.

such Court or Courts of each respective Great Session and Assizes, within their several and respective Circuits and Counties aforesaid, which Person or Persons so appointed shall have full Power and lawful Authority so to do.

V. Provided always; and be it further enacted, That his Majesty, his Heirs and Successors, shall and may, under his and their Royal Sign Manual, appoint one or more Person or Persons, learned as aforesaid, to execute the said Office of Justice in the said County Palatine of *Chester*, or in any of the said Counties of *Wales*, for the then next ensuing Great Sessions, in the Place and Stead of any of the said Justices, who shall, by Illness, be prevented attending upon such Great Sessions, and so often as the Necessity of the Case shall require; any Law, Usage, or Custom to the contrary thereof in any wise notwithstanding.

'VI. And whereas it is conceived that the Suitors in the 'Court of the King's Great Sessions in the Dominion and Principality of *Wales* will, in many Cases, experience great 'Benefit and Advantage by having their Suits tried by Special 'Juries;' be it therefore further enacted by the Authority aforesaid, That the Justices of his Majesty's Great Sessions in *Wales*, upon Motion made on Behalf of his Majesty, his Heirs or Successors, or on Motion of any Prosecutor or Defendant in any Indictment or Information of any Misdemeanour, or on the Motion of any Plaintiff or Plaintiffs, Defendant or Defendants, in any Action, Cause or Suit whatsoever, depending, or to be brought and carried on, in any of his Majesty's Courts of Great Sessions in *Wales*, shall and may, in case such Justices in their Discretion shall think fit, order and appoint a Jury to be struck before the proper Officer of such Courts, for the Trial of any Issue joined in any of the said Cases, in such Manner as Special Juries have been usually struck in the Courts of Law at *Westminster*, upon Trials at Bar had in the said Courts; which Jury, so struck as aforesaid shall be the Jury returned for the Trial of such Issue as aforesaid.

Special Juries; may be struck as in the Courts at Westminster.

VII. Provided always, and be it further enacted by the Authority aforesaid, That the Person or Party who shall, by Virtue of this Act, apply for such Special Jury shall not only bear and pay the Fees for striking such Jury, but shall also bear, pay, and discharge all the Expences occasioned by the Trial of the Cause by such Special Jury, and shall not have any further or other Allowance for the same, upon Taxation of Costs, than such Person or Party would be intitled unto in case the Cause had been tried by a common Jury, unless the Justices or Justice before whom the Cause is tried shall, immediately after the Trial, certify in open Court, under his or their Hand or Hands, upon the Back of the Record, that the same was a Cause proper to be tried by a Special Jury.

1l. 1s for such Service.

'VIII. And to prevent the Demand or Payment of extravagant Fees of Jurymen returned under the Authority of 'this Act,' be it further enacted by the Authority aforesaid, That no Person who shall serve upon any Jury, appointed or

returned by Authority of this Act, shall be allowed, or take, for serving on any such Jury, more than the Sum of Money which the Justices or Justice who tries the Issue or Issues shall think just and reasonable, not exceeding the Sum of one Pound one Shilling, except in Causes where a View hath been or shall be directed. No. 47. 12 George III. c. 51.

'IX. And, for greater Ease and Benefit of all Persons 'whomsoever in the taking of Affidavits to be made use of and 'read in the Courts of his Majesty's Great Sessions in *Wales*, 'in all Matters and Causes whatsoever depending, or to be 'depending, in all or any of the Courts aforesaid, or in 'anywise concerning the Proceedings of or in the same,' be it enacted by the Authority aforesaid, That the Justices of the respective Courts of Great Sessions in *Wales* for the Time being shall and may, by one or more Commission or Commissions, under the Seal of the said respective Courts, from Time to Time, as Need shall require, impower such and so many Persons as they shall think fit and necessary, in all and every the several Shires and Counties within their respective Circuits in the said Dominion of *Wales*, to take and receive all and every such Affidavit and Affidavits as any Person or Persons shall be willing and desirous to make before any of the Persons so impowered in, or concerning any Cause, Matter, or Thing depending, or hereafter to be depending, or in anywise concerning any of the Proceedings to be in their respective Circuits of Great Sessions, as the Justices of his Majesty's Court of King's Bench, or Common Pleas, or the Lord Treasurer, Chancellor, and Barons of the Court of Exchequer for the Time being, do use to do; which said Affidavits, taken as aforesaid, shall be filed in the several and respective Offices of the said several and respective Courts of Great Sessions, and the same shall and may be read and made use of in the said respective Courts to all Intents and Purposes, as other Affidavits taken in the said respective Courts now are; and that all and every Affidavit and Affidavits, taken as aforesaid, shall be of the same Force as Affidavits taken in the said respective Courts now are; and all and every Person and Persons forswearing him, her, or themselves, in such Affidavit or Affidavits, shall incur and be liable unto the same Penalties, as if such Affidavit or Affidavits had been made and taken in open Court; which said several Commissions shall be made out by the Prothonotary, upon a Fiat or Warrant from the said Justices for the Time being of the said respective Courts of Great Sessions in *Wales*; and the said Prothonotary shall cause an Entry to be made in a Book to be kept for that Purpose of the Names of the Persons to whom such Commissions are, from Time to Time, granted, and the respective Times when issued; and the following Fees shall be paid for each Commission, and no more; *(to wit,)* the Sum of two Shillings for the Fiat or Warrant; the Sum of four Shillings for making out the said Commission, besides the King's Duty, and Value of the Parchment; and the Sum of four Shillings for sealing the

Justices may impower Persons to take Affidavits, &c.

No. 47. 13 George III. c. 51.

same; and every Commissioner, or Person so impowered, shall take and receive, for the swearing of every Affidavit before him, the Sum or Fee of one Shilling, and no more.

X. Provided nevertheless, That no Person appointed a Commissioner as aforesaid shall take or receive any Affidavit during the Time of holding the Great Sessions, or Assizes, for the County or Place in which such Cause, Matter, or Thing, shall be depending.

XI. Provided always, and it is hereby enacted, That such Officers of the said several and respective Courts of Great Sessions in *Wales*, as have heretofore taken or sworn Affidavits, shall and may continue so to do, in the same Manner as if this Act had not been made; any Thing herein contained to the contrary notwithstanding.

Justices of the Courts of Great Sessions may impower Persons to take Recognizances of Bail, &c.

'XII. And, to give greater Ease and Benefit to all Persons within the said Dominion of *Wales*, in taking the Recognizances of Special Bails upon all Actions and Suits depending, or to be depending in any of the Courts of his Majesty's Great Sessions in *Wales*;' be it further enacted by the Authority aforesaid, That the Justices of the respective Courts of Great Sessions in *Wales* for the Time being shall and may, by one or more Commission or Commissions, under the Seal of the said respective Courts, from Time to Time, as Need shall require, impower such and so many Persons (other than common Attorneys or Solicitors) as they shall think fit and necessary in all and every the several Shires and Counties within their respective Circuits, in the said Dominion of *Wales*, to take and receive all and every such Recognizance or Recognizances of Bail or Bails, as any Person or Persons shall be willing or desirous to acknowledge or make before any of the Persons so impowered in any Action or Suit depending, or hereafter to be depending, in the said respective Courts, or any of them, in such Manner and Form, and by such Recognizance or Bail Piece, as the Justices of the said Courts of Great Sessions respectively have used to take the same; which said Recognizance or Recognizances, Bail Piece or Bail Pieces, so taken as aforesaid, together with an Affidavit made of the due taking of the Recognizances of such Bail or Bail Piece, by some credible Person present at the taking thereof, shall be transmitted to the Prothonotary's Office, there to be filed of Record, paying such Fees as have usually been received for the taking of Special Bails by the Justices Clerks, and other Officers of the said respective Courts, which Recognizance of Bail or Bail Piece, so taken and transmitted, shall be of the like Effect, as if the same were taken before any of the said Justices; for the taking of every which Recognizance, or Recognizances of Bail or Bail Piece, the Person or Persons so impowered shall receive only the Sum of, or Fee of two Shillings, and no more.

Justices to make Rules for justifying Bail.

XIII. And be it further enacted by the Authority aforesaid, That the said Justices of Great Sessions, in their respective Courts, shall and may make such Rules and Orders, for the justifying of such Bails, and making the same absolute, as to

them shall seem meet, so as the Cognizor or Cognizors of any such Bail or Bails be not compelled to appear in Person in any of the said Courts, to justify him or themselves; but the same may be, and is hereby directed to be dertermined by Affidavit or Affidavits, duly taken before the said Commissioners, touching the Value of their respective Estates.

No. 47. 13 George III. c. 51.

XIV. Provided always, That the Attorney for the Defendant or Defendants shall give Notice to the Plaintiff's Attorney of the taking of such Bail within Eight Days after the Caption thereof, and that the Plaintiff shall be at Liberty, within Eight Days after such Notice, to take Exception to such Bail, and enter the same in the Prothonotary's Office; and such Exception having been taken, the Bail shall be justified before the Justices, before the Rising of the Second Court at the ensuing Sessions; and the Bail Bond taken by the Sheriff, Under Sheriff, or other Officer, for the Defendant's Appearance, shall remain in Force until such Special Bail shall have been finally justified as aforesaid; but the Plaintiff, nevertheless, shall be at Liberty to file his Declaration conditionally in the Prothonotary's Office; and the Defendant, in case such Declaration shall have been delivered seven Days before the first Day of the Session next ensuing the Return of such Writs, shall plead thereto, before the Rising of the Second Court of such Great Sessions, unless further Time shall be given him by the Court for that Purpose.

'XV. And whereas all Writs relating to Actions depending in the Courts of Great Sessions in the several Counties in *North* and *South Wales*, are returnable at the Great Session held respectively for the said Counties, and at no other Time, by which Means no Action that is commenced (except where the Defendant or Defendants voluntarily appear) can be brought to issue, and tried before the second Session after such Action is commenced at the soonest, which is usually near a Year, and a great Delay to the Suitors of the said Courts:' For Remedy whereof, and for the greater Ease and Benefit of the said Suitors, be it further enacted by the Authority aforesaid, That from and after the first Day of *January*, one thousand seven hundred and seventy-four, all original Writs, Bills, and all mesne Process whatsoever, by which any Action shall be commenced or sued in the said Courts of Great Sessions for the said Counties of *North* and *South Wales*, shall and may be made returnable before his Majesty's Justices respectively of the several Counties of *North* and *South Wales*, on the first *Wednesday* in any Month, in each of the two Vacations, annually, betwixt the two Sessions, or on the first Day of the next Sessions, at the Election of the Plaintiff or Plaintiffs, his, her, or their Attorney, who shall sue out the same; And that all such Writs or Process which shall issue out of the said Courts, returnable in the Vacations as aforesaid, and whereon or wherewith the Defendant or Defendants shall be arrested or served with a Copy or Copies, such Defendant or Defendants shall appear and file special Bail, or enter a com-

Original Writs, &c. returnable before the Justices.

No. 17. 13 George III. c. 51.

mon Appearance, as the Case shall require, on the Day of such Return, or within fourteen Days next after; and in case of Neglect in bailable Actions, the Sheriff, Under Sheriff, or other Officer shall, at the Request and Costs of the Plaintiff or Plaintiffs, in such Actions, his, her, or their Attorney, assign to such Plaintiff or Plaintiffs the Bail Bond taken for the Defendant's Appearance upon the Arrest, by Indorsement and Attestation under his Hand, in the Presence of two or more credible Witnesses; and the Plaintiff or Plaintiffs in such Action, after such Assignment made, may bring an Action or Suit upon such Bail Bond, in his, her, or their own Name or Names; and the said Courts may, by Rule or Rules thereof respectively, give such Relief to the Plaintiff and Plaintiffs, Defendant and Defendants, in the original Action, and to the Bail so sued upon the Bail Bond, as is agreeable to Justice and Reason; and in case on Service of the Copy of any Writ or Process, (having Notice thereunder written, purporting the Intent of such Service) returnable in the Vacation Time as aforesaid, the Defendant or Defendants so served therewith, shall not appear at the Return, or within fourteen Days next after the Return thereof, as aforesaid, it shall and may be lawful to and for the Plaintiff or Plaintiffs in such Action, upon Affidavit being made, and filed with the Prothonotary of the said respective Courts, or his Deputy, of the personal Service of such Writ or Process as aforesaid, to enter a common Appearance or Appearances for the Defendant or Defendants, and to proceed thereon as if such Defendant or Defendants had entered his, her, or their Appearance; and special Bail having been filed, or a common Appearance entered, as the Case shall require, the Plaintiff in such Action may proceed to file his Declaration; and the Defendant or Defendants, in case such Declaration shall have been delivered seven Days before the first Day of the Session next ensuing the Return of such Writ, shall be bound to plead thereto, before the Rising of the second Court of such Great Session, to be holden for the County or Place in which such Action shall have been brought, unless the Court shall think proper to allow further Time for that Purpose.

Original Bills how to be signed.

XVI. And be it further enacted by the Authority aforesaid, That from and after the first Day of *January*, one thousand seven hundred and seventy-four, every Officer or Clerk belonging to the several Courts of Great Sessions in the Principality of *Wales*, who shall sign any Original Writ or Bill, relating to Actions depending in the said Courts of Great Sessions, shall, at the signing thereof, set down upon such Original Writ or Bill the Day and Year of his signing the same, which shall be entered upon the Remembrance, or in the Book where the Abstracts of such Original Writ or Bill shall be entered, upon Pain to forfeit the Sum of five Pounds for every Offence or Neglect of such Officer or Clerk aforesaid; to be recovered by any Person who shall sue for the same, by Action of Debt, Bill, Plaint, or Information, wherein no Wager of Law, Protection, or Essoin, or more than one Imparlance shall be allowed.

'XVII. And whereas, by sundry Statutes, Penalties are 'given for Offences thereby provided against, and such Penal- 'ties are directed to be sued for and recovered in his Majesty's 'Courts of *Westminster* only, and the enabling the respective 'Courts of Great Session to hold Pleas, or to have Cognizance 'in all such Cases arising or happening within their respective 'Jurisdictions, would be for the Ease and Benefit of the Inha- 'bitants of the Dominion of *Wales*;' be it further enacted by the Authority aforesaid, That from and after the first Day of *January*, one thousand seven hundred and seventy-four, in all Cases where any Penalty or Penalties is or are given by any Statute, and the same is, are, or shall be directed to be recovered in the Courts of *Westminster*, or either of them, excepting such as may by the Laws now in being be sued for only in his Majesty's Court of Exchequer, and the Offence for which any such Penalty or Penalties hath or shall be given, shall be done or committed in any of the Counties of *Wales*, and the Defendant or Defendants liable to the same shall be resident within the Jurisdiction of the Great Session held for any County of *Wales*, it shall and may be lawful to and for the Plaintiff or Plaintiffs, Prosecutor or Prosecutors, or other Person to whom any such Penalty is given, or who shall be intitled to sue for the same, in every such Case, to sue for and recover the same in the Courts of Great Session respectively in *Wales*, within which such Penalties have or shall be incurred, in such Manner and Form as he, she, or they might have done in the Courts at *Westminster*; and that the said respective Courts of Great Session shall have Jurisdiction as fully, to all Intents and Purposes, as if the said Courts had been respectively named in all and every of the said Acts, and the Powers thereby given extended to the said respective Courts.

No. 47. 13 George III. c. 51.

Penalties given by Statutes where to be sued and recovered.

## No. 48.

27 George III. c. 43. — An Act for taking and swearing Affidavits to be made use of in the Court of Session of the County Palatine of *Chester*; and for taking of Special Bail in Actions and Suits depending in the same Court.

'WHEREAS it hath been found inconvenient that no 'Person or Persons is or are impowered to grant 'Commissions for the taking or swearing of Affidavits, to be 'read and made use of in the Court of Session, otherwise 'called *Great Session*, for the County Palatine of *Chester*, 'before his Majesty's Justices of the said Court, as well of 'Pleas of the Crown as of Common Pleas, and of all Manner 'of Pleas whatsoever, in the several Matters and Causes 'depending, or hereafter to be depending, in the said Court; 'and that the Prothonotary of the said Court for the Time 'being, or his officiating Deputy, have not Power and Autho-

No. 48. 27 George III. c. 43. Preamble.

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'rity to take and swear such Affidavits, as aforesaid, and 'to take Affidavits for the Justification of Special Bails, taken 'in Actions and Suits in the said Court; and also, that no Person or Persons is or are impowered to grant Commissions for 'the taking of Special Bails in Actions and Suits in the said 'Court; for Remedy whereof,' be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, the Justices of the said Court for the Time being, or either of them, shall and may, by one or more Commission or Commissions, under the Seal of the said County Palatine, from Time to Time, as Need shall require, impower such and so many Person or Persons as they or either of them shall think fit or necessary, to take and receive all and every such Affidavit and Affidavits as any Person or Persons shall be willing to make, before any of the Persons so impowered, in or concerning any Cause, Matter, or Thing, depending, or hereafter to be depending, or in anywise concerning any of the Proceedings to be in the said Court, as the Justices of his Majestys' Courts of King's Bench and Common Pleas, the Lord Treasurer, and the Chancellor and Barons of the Court of Exchequer for the Time being, or any of them, do use to do; and also that, from and after the passing of this Act, it shall and may be lawful for the Prothonotary of the said Court of Session for the said County of *Chester* for the Time being, or his officiating Deputy *ex officio*, as Officers of the same Court, and without such Commission or Commissions as aforesaid, to take and receive all and every such Affidavit and Affidavits as aforesaid, in or concerning such Causes, Matters, or Things as aforesaid; which said Affidavits, taken as aforesaid, shall be filed in the Office of the Prothonotary of the said County, and the same shall and may be read and made use of in the said Court, to all Intents and Purposes, as other Affidavits taken in the said Court now are; and that all and every Affidavit and Affidavits, taken as aforesaid, shall be of the same Force and Effect as Affidavits taken in the said Court now are. And all and every Person and Persons forswearing him or themselves in such Affidavit or Affidavits, shall incur and be liable unto the same Pains and Penalties as he, she, or they would have incurred and been liable unto if such Affidavit or Affidavits had been made and taken in open Court; which said several Commissions shall be made out by the Prothonotary of the said Court of Session, upon a Fiat or Warrant from the said Justices for the Time being, or one of them; and the said Prothonotary shall cause an Entry to be made, in a Book to be kept for that Purpose, of the Names of the Persons to whom such Commissions shall be from Time to Time granted, and of the respective Times when such Commissions shall be issued; and the following Fees shall be paid for each Commission and no more; (to wit:) The Sum of Two Shillings for the Fiat or Warrant: the Sum

Justices of the Court of Session for the County Palatine of Chester may impower Persons to take Affidavits in Causes depending therein.

Prothonotary or his Deputy may take like Affidavits, &c.

Persons forswearing themselves liable to the same Penalties as for false Affidavits in open Court.

Manner of making out Commissions for taking Affidavits, &c.

Fees to be paid for such Commissions, and for taking Affidavits.

No. 48. 27 George III. c. 43.

of four Shillings for making out the Commission, besides the King's Duty and the Value of the Parchment; and the Sum of four Shillings for sealing the same: And the said Prothonotary, and his officiating Deputy, and every Commissioner, or Person so impowered, as aforesaid, shall take and receive for the swearing of each Affidavit before him or them, the Sum or Fee of one Shilling, and no more: Provided nevertheless, That neither any Person appointed a Commissioner as aforesaid, nor the said Prothonotary, or his Deputy, shall take or swear any Affidavit within one Mile of the Castle of *Chester* during the Time of holding the Session for the said County.

No Affidavit to be taken within a Mile of Chester Castle during the County Session.

'II. And, to give greater Ease and Benefit to the Persons 'residing within the said County Palatine of *Chester*, in taking 'Recognizances of special Bail in all Actions and Suits depend'ing or to be depending in the said Court of Session;' be it further enacted by the Authority aforesaid, That the Justices of the same Court for the Time being, or either of them, shall and may, by one or more Commission or Commissions under the Seal of the said County Palatine from Time to Time, as Need shall require, impower such and so many Person and Persons (other than common Attornies or Solicitors) as they or either of them shall think fit and necessary in the said County Palatine of *Chester*, to take and receive all and every such Recognizance or Recognizances of Bail or Bails, as any Person or Persons shall be willing and desirous to acknowledge or make before any Person so impowered in any Action or Suit depending, or hereafter to be depending in the said Court, in such Manner and Form, and by such Recognizance or Bail Piece as Special Bails are usually, or by Law ought to be taken; which said several last-mentioned Commissions shall be made out by the Prothonotary of the said Court upon a Fiat or Warrant from the said Justices for the Time being, or one of them, and which said Recognizance or Recognizances, Bail Piece, or Bail Pieces, so taken as aforesaid, together with an Affidavit made of the due taking of the Recognizances of such Bail or Bail Piece, by some credible Person present at the taking thereof (and which Affidavit the Person so impowered to take the said Bail shall be, and hereby is authorised to take and swear), shall, within ten Days after the taking such Bail, be transmitted to the Office of the Prothonotary of the said County, there to be filed of Record upon Payment of the Sum of five Shillings and Fourpence; and which Recognizance of Bail or Bail-piece, so taken and transmitted, shall be of like Effect as if the same were taken before the Justices of the said Court, in open Court; and the following Fees, and no more, shall be paid for each of the said last-mentioned Commissions, and for taking the Acknowledgments of the Bail and Affidavits respecting the same; (to wit,) The Sum of Two Shillings for the Fiat or Warrant; the Sum of Seven Shillings and Sixpence for making out the Commission, besides the King's Duty and Parchment; the Sum of four Shillings for the Seal; the Sum of five Shillings for taking every such Acknowledgment or Bail

Justices of the said Court may impower Persons to take Recognizances.

Manner of making out Commissions for taking such Recognizances, &c.

Fees to be paid for Cmmissions to take Recognizances.

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Piece, and the Sum of one Shilling for the swearing the Affidavit of the due taking thereof.

Justices of the said Court may make Rules for justifying Bail by Affidavits before the Commissioners

III. And be it further enacted by the Authority aforesaid, That the said Justices for the Time being shall and may make such Rules and Orders for the justifying of such Bails, and making the same absolute, as to them shall seem meet, so that it may not be necessary for the Cognizor or Cognizors of any such Bail or Bails to appear in the said Court to justify him or themselves, but that the same may be determined by Affidavit or Affidavits duly taken before any of the said Commissioners to be appointed as aforesaid (or before the Prothonotary of the said Court for the Time being, or his officiating Deputy *ex officio*, as Officers of the said Court, and without any Commission for that Purpose), touching the Value of the respective Estates, and other necessary Qualifications of such Cognizor or Cognizors, and for the swearing of each such Affidavit shall be taken the Sum of one Shilling, and no more Provided also nevertheless, That nothing in this Act contained shall prevent the Prothonotary of the said Court for the Time being, or his officiating Deputy, from taking and receiving *ex officio*, and as Officers of the said Court, Recognizances of Bails in Actions or Suits commenced, or hereafter to be commenced in the said Court, in such Manner as he and they have done, or by Law might do, and as if this Act had not been made

Power of Prothonotary, or his Deputy, to take Recognizances not to be affected by this Act.

If any Person represent another in entering into special Bail, he shall be adjudged a Felon.

IV. And it is further enacted by the Authority aforesaid, That any Person or Persons who shall, before any Person or Persons impowered by virtue of this Act, as aforesaid, to take Special Bail or Bails, represent or personate any other Person or Persons, whereby the Person or Persons so represented or personated may be liable to the Payment of any Sum or Sums of Money for Debt or Damages, to be recovered in the same Suit or Action wherein such Person or Persons is or are represented or personated, as if he, she, or they, had really acknowledged and entered into the same, being lawfully convicted thereof, shall be adjudged, esteemed, and taken to be a Felon or Felons, and shall suffer and incur the same Pains, Penalties, and Forfeitures, as Persons convicted of the like Offences are liable to by virtue of an Act, passed in the fourth Year of the Reign of King *William* and Queen *Mary*, intituled, " An Act for taking Special Bails in the Country, upon Actions and Suits depending in the Courts of King's Bench, Common Pleas, and Exchequer, at *Westminster* "

## No. 49.

33 George III. c. 68.—An Act for remedying Inconveniences attending certain Proceedings in the Courts of Great Sessions in *Wales*, and for the County Palatine of *Chester*, in the Court of Common Pleas for the County Palatine of *Lancaster*, in the Court of Pleas for the County Palatine of *Durham*, and in the County Courts in *Wales*.—[17th. *June* 1793.]

No. 49. 33 George III, c. 68.

'WHEREAS Persons against whom Judgements may be 'obtained in the Courts of Great Sessions in *Wales*, 'the Court of Great Sessions for the County Palatine of *Chester*, the Court of Common Pleas for the County Palatine of '*Lancaster*, and the Court of Pleas for the County Palatine of '*Durham*, may, in order to avoid Execution, remove their 'Persons and Effects beyond the Jurisdiction of such Courts:' Be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in all Cases where final Judgement shall be obtained in any Action or Suit, in any of the said Courts, it shall and may be lawful to and for any of his Majesty's Courts of Record at *Westminster*, upon Affidavit made before a Judge, or Commissioner authorized to take Affidavits in such Court, and filed therein, of such Judgement being obtained, and diligent Search and Enquiry having been made after the Person or Persons against whom such final Judgement shall be obtained, on his, her, or their Effects, and of Execution having issued against the Person or Persons, or Effects, as the Case may be, of such Person or Persons, against whom such final Judgement shall be obtained, and that the Person or Persons, or Effects of such Person or Persons, are not to be found within the Jurisdiction of such Court, to cause a Transcript of the Record of the said Judgement to be removed into such Court at *Westminster*; and to issue Writs of Execution thereupon to the Sheriff of any County, City, Liberty, or Place, against the Person or Persons, or Effects of such Person or Persons, against whom such final Judgement shall be obtained, in such Manner as upon Judgements obtained in the said Courts at *Westminster*; and the Sheriff upon every such Execution shall, and he is thereby authorised to detain the Person or Persons against whom such Execution shall be issued, until the Sum of forty Shillings be paid to him, or to levy that Sum out of the Effects, according to the Nature of the Execution, for the extraordinary Costs of the Person or Persons by whom such final Judgement shall be obtained in such Court subsequent to the said Judgement, and of the Execution in the said Court at *Westminster*, over and above the Money for which such Execution shall be issued.

Where final Judgments shall be obtained in the Courts of Great Sessions in Wales, &c. and the Persons or Effects cannot be found within the Jurisdiction of the Court, any Court of Record at Westminster may issue Execution, &c.

No. 49.
33 George III. c. 68

Clauses in 34 Henry VIII. cap. 26 enacting, That the Sheriffs in Wales, in Plaints under 40s. may award a Capias, &c. and that no Judgement be stayed by any Writ of false Judgement, repealed.

'II. And whereas by an Act, passed in the thirty-fourth 'Year of the Reign of his Majesty King *Henry* the Eighth, 'intituled, "An Act for certain Ordinances in the King's Dominions and Principality of *Wales*," it is amongst other 'Things enacted, That the Sheriff of the several Counties or 'Shires in *Wales* in the said Act mentioned, upon every Judgement had before him in his County or Hundred Court, in any 'Plaint under forty Shillings, may award a *Capias ad satisfaciendum* to arrest the Party condemned; and it is also enacted, 'That no Execution of any Judgment given or to be given in 'any Court in the said Act mentioned be stayed or deferred by 'reason of any Writ of false Judgement, but that Execution 'may be had and made at all Times before the Reversal of the 'said Judgment, the Pursuit of the said Writ notwithstanding:' Be it further enacted by the Authority aforesaid, That the several Clauses aforesaid in the said Act shall be, from and after the passing of this Act, repealed.

No Execution to be stayed by any such Writ, unless the Prosecutor enter into a Recognizance, &c.

III. Provided always, and be it further enacted, That no Execution shall be stayed upon or by any Writ of false Judgement for the reversing of any Judgement given in any County Court in *Wales*, unless the Person or Persons who shall prosecute the said Writ be first bound unto the Party or Parties for whom the said Judgment shall have been given, in a Recognizance with two sufficient Sureties, such as the Sheriff in the said Court shall approve and allow, in the Sum of ten Pounds (except where the Sum adjudged for Costs and Damages shall exceed the Sum of ten Pounds, and in such Case in double the Sum so adjudged,) to prosecute the said Writ with Effect, and also to pay and satisfy, if the said Judgement be affirmed, or the said Writ abated or nonprossed, all and singular the Damages and Costs adjudged, and also the Costs and Damages awarded for the Delay of Execution; the Acknowledgment of which Recognizance the said Sheriff is hereby authorized and required to take and file amongst the Proceedings of his said Court; and for the Caption and Filing whereof the Sum of one Shilling, and no more, shall be paid to the said Sheriff by the Person or Persons who shall prosecute the said Writ: And in case of a Breach of the Condition of such Recognizance, the Conuzee or Conuzees thereof may have and maintain an Action of Debt on the same, in any of his Majesty's Courts of Record in *Wales*, against the Conuzors, or either of them, to recover all and singular the Damages and Costs in the said Recognizance mentioned.

In case of Breach of Recognizance an Action of Debt may be maintained.

## No. 50.

### 34 George III. c. 58.—An Act to prevent the Removal of Suits from the Inferior Courts in the County Palatine of *Lancaster*, into the Court of Common Pleas of the said County Palatine.—[23d. *May* 1794.]

No. 50. 34 George III. c. 58.

'WHEREAS great Mischiefs have arisen from the Facility 'of removing Causes of small Value from the Inferior 'Courts in the County Palatine of *Lancaster*, into the Court of 'Common Pleas of the said County Palatine;' For Remedy whereof, be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, no Execution shall be stayed or delayed upon or by any Writ of false Judgement, or *Supersedeas* thereon, to be sued for the reversing of any Judgement given or to be given in any Inferior Court within the County Palatine of [illegible]*ster*, where the Debt or Damages are under ten Pounds, [illegible] such Person or Persons in whose Name or Names such [illegible] of false Judgement shall be brought, with two sufficient [illegible]es, [illegible] as the Court (wherein such Judgement is or shall [illegible]ven) shall allow of, shall, first, before such Stay made, or [illegible]*sedeas* to be awarded, be bound unto the Party for whom such Judgement is or shall be given, by Recognizance to be acknowledged in the same Court, in double the Sum adjudged to be recovered by the said former Judgment, to prosecute the said Writ of false Judgement with Effect, and also to satisfy and pay (if the said Judgement be affirmed, or the said Writ of false Judgement be not proceeded in) all and singular the Debt, Damages, and Costs adjudged, and all Costs and Damages to be awarded for the same delaying of Execution.

No Execution shall be stayed by Writ of false Judgement, &c. in any inferior Court in the County of Lancaster, but on certain Conditions,

II. And be it further enacted, That no Cause, where the Cause of Action shall not amount to the Sum of ten Pounds or upwards, shall be removed or removeable from any Court of Inferior Jurisdiction into the Court of Common Pleas at *Lancaster*, by any Writ of *Pone accedas ad curiam certiorari*, or otherwise, unless the Defendant, who shall be desirous of removing such Cause, shall enter into the like Recognizance as aforesaid, for Payment of the Debt, or Damages and Costs, in case Judgement shall pass against him; any Law or Statute to the contrary thereof notwithstanding.

nor any Action for less than 10l. be removed from any inferior Court into the Common Pleas of the said County.

## No. 51.

39 and 40 George III. c. 105.—An Act for the better regulating the Practice, and for preventing Delays in the Proceedings of the Court of Common Pleas at *Lancaster.*—[28th. *July* 1800]

No. 51. 39 & 40 George III. c. 105.

'WHEREAS many Delays and Difficulties exist in the 'Practice of the Court of Common Pleas at *Lancaster*, 'in and for the County Palatine of *Lancaster*, by reason that 'the Commencement and Continuance of Suits and Proceed-'ings in the said Court have relation to the Times of the Teste 'of the original Writs whereupon such Suits and Proceedings 'are grounded, and to the Assizes at which such Writs are 'returnable, and at or of which such Suits and Proceedings 'are inrolled or recorded, and also by reason of the Want of 'more frequent Days of Return of Writs of Inquiry of Damages 'and *Scire facias*, and of judicial Process, issuing out of the 'same Court;' for Remedy whereof, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, it shall and may be lawful to and for any Plaintiff or Plaintiffs, Defendant or Defendants respectively, in any personal Suit or Action or in any Action of Trespass and Ejectment hereafter to be depending in the said Court, to declare upon, plead, and give Evidence of any Cause or Causes of Action, or any Matter or Thing, Matters or Things, in Bar or Preclusion of any such Suit or Action, or any other Matters or Things whatsoever, provided the same shall have accrued or happened, or shall hereafter accrue or happen, prior to the Day of the actual signing and issuing of the Writ of *Capias ad respondendum*, or other Process, first actually issued forth in such personal Suit or Action, or prior to the Day of the actual serving of any Declaration or Declarations in any such Action of Trespass and Ejectment, notwithstanding such Cause or Causes of Action, Matters or Things, shall or may not have accrued prior to the Teste and Return of the original Writ or Writs whereupon or whereby such Suit or Action is or shall be, either really or by Fiction of Law, grounded or warranted, or prior to the Assizes or Time wherein or whereof such Declaration or Declarations is or are, or shall or may be filed and recorded; and that no Advantage shall be taken by Reason of any such Cause or Causes of Action, Matters or Things as aforesaid, having accrued or being stated to have accrued subsequent to the Teste and Return of such Original Writ or Writs, or subsequent to the Assizes or other the Time last above mentioned, or any of them, by or upon Demand of Oyer of any original Writ, Plea in Abatement, Demurrer

Plaintiffs or Defendants may plead and give Evidence of any Cause of Action, or any Thing in Bar of any Suit, provided the same shall happen prior to the issuing of the Writ of Capias ad respondendum, &c. or prior to the Day of actual Service of any Declaration in Ejectment; notwithstanding the Cause of Action shall not have accrued prior to the Teste and Return of the original Writ, &c.

No Advantage shall be taken by reason of any Action having accrued subsequent to such Teste and Return, &c.

No. 51.
39 & 40 George III. c. 105.

to any Pleading or Pleadings, Demurrer to Evidence, Bill of Exceptions, Writ of Error, or any other Process or Proceedings whatsoever.

Process issuing out of Court may be returnable according to the present Practice, or on any of the Return Days in Easter and Michaelmas Terms, according to the Court of Common Pleas at Westminster, &c.

II. And be it further enacted, That from and after the passing of this Act, any Writ or Writs of Inquiry of Damages, *Scire facias*, and any judicial or other Process whatsoever hereafter to be issued forth and out of the same Court in any Action or Suit hereafter to be depending in the said Court, (except such Process as may, according to the present Course and Practice of the said Court, be made returnable on the first *Wednesday* of any Month,) shall and may be awarded, made, and issued forth returnable either upon or at the several Days and Times whereupon the same may now be made returnable respectively, according to the present Course and Practice of the said Court, or returnable on any of the Return Days in *Easter* and *Michaelmas* Terms respectively, according to the Course of his Majesty's Court of Common Pleas at *Westminster*; and that such Writs may be proceeded upon, and Judgment entered, and Execution issued thereon, tested on the Returns of such Writs of Inquiry, or *Scire facias*, or judicial Process, in such and the like Manner as if the same had been made returnable at the preceding Session of Assizes of the said County Palatine.

No final Judgement shall be entered or Execution issued within 10 clear Days after the Day of the Return of the Writ of Inquiry or Scire facias, &c.

III. Provided always, That no final Judgment be entered, or Execution issued, within the Space of ten Days next after the Day of the Return of any such Writ of Inquiry of Damages or *Scire facias*, made returnable under the Authority of this Act, exclusive of the Day of such Return and the Day of entering such final Judgment, or issuing forth of such Execution.

Parties not debarred from moving in arrest of Judgement.

IV. And Provided always, That nothing herein contained shall be construed to debar any Party or Parties from moving in Arrest of Judgment, or bringing a Writ of Error, in the same Manner as he or they might have done before the making of this Act.

Proceedings commenced shall not be affected.

V. Provided always, and be it enacted, That nothing in this Act contained shall alter, vary, or affect any Proceedings in any Action already commenced, and now depending in the said Court of Common Pleas at *Lancaster*.

Publick Act.

VI. And be it further enacted, That this Act shall be adjudged, deemed, and taken to be a Publick Act, and shall be judicially taken Notice of as such, by all Judges, Justices, and other Persons whomsoever, without specially pleading the same.

# PART IV. CLASS XVI.

## INFERIOR COURTS.

### No. 1.

9 Henry III. (Magna Charta) c. 35.—At what Time shall be kept a County Court, Sheriff's Turn, and a Leet.

No. 1. 9 Henry III. c. 35.

'NO County Court from henceforth shall be holden, but from Month to Month; and where greater Time hath been used, there shall be greater: Nor any Sheriff, or his Bailiff, shall keep his Turn in the Hundred but twice in the Year; and no where but in due Place, and accustomed; that is to say, once after *Easter*, and again after the Feast of Saint *Michael*. And the View of Frankpledge shall be likewise at the Feast of Saint *Michael* without occasion; so that every Man may have his Liberties which he had, or used to have, in the Time of King *Henry* our Grandfather, or which he hath purchased since: but the View of Frankpledge shall be so done, that our Peace may be kept; and that the Tything be wholly kept as it hath been accustomed; and that the Sheriff seek no Occasions, and that he be content with so much as the Sheriff was wont to have for his View-making in the Time of King *Henry* our Grandfather.'

*Ex Rot. in Turr.* Lond.

NULLUS Comitatus decetero teneatur nisi de mense in mensem & ubi major terminus esse solebat major sit. Nec aliquis Vicecomes vel Ballivus suus faciat tornum suum per Hundredum nisi bis in anno & non nisi in loco debito & consueto videlicet semel post Pasch' & iterum post festum sancti Michaelis. Et visus de franco plegio tunc fiat ad illum terminum sancti Michaelis sine occasione ita scilicet quod quilibet habeat libertates suas quas habuit vel habere consuevit tempore H. Regis Avi nostri vel quas postea perquisivit fiat autem visus de franco plegio sic videlicet quod pax nostra teneatur & quod theothinga teneatur integra sicut esse consuevit & quod Vicecomes non querat occasiones & quod contentus sit de eo quod Vic' habere consuevit de visu suo faciendo tempore H. Regis Avi nostri.

## No. 2.

20 Henry III. (Merton) c. 10.—Attornies allowed to make Suit to several Courts.

No. 2. 20 Henry III. c. 10.

Cotton *MS.*

IX. PRovisum est insuper, quod liber quilibet homo qui sectam debet ad Comitatum, [Trithingum,] Hundredum, & Wapentachium, vel ad Curiam domini sui, libere possit facere attornatum suum, ad sectas illas pro eo faciend.'

'IT is provided and granted, that every Freeman, which oweth Suit to the County, Trything, Hundred, and Wapentake, or to the Court of his Lord, may freely make his Attorney to do those Suits for him.'

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## No. 3.

6 Edward I. (Gloucester) c. 8.—No Suit for Goods in the King's Courts under Forty Shillings. Attorneys may be made where an Appeal lieth not. The Defendant being essoined shall bring in his Warrant.

[Inserted ante. C. I. No. 3.] *

* See Appendix, No. 3.

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## No. 4.

13 Edward I. stat. 1. (Westminster second) c. 36.—A Distress taken upon a Suit commenced by others.

No. 4. 13 Edward I. st. 1. c. 36. The Penalty for Procurement of Suits.

*Ex Rot. in Turr.* Lond.

ET quia domini curiarum & alii qui curias tenent & senescalli volentes gravare subditos suos cum non habeant legalem viam eos gravandi procurant alios movere querelas versus eos & dare vadium & offere plegios vel impetrare brevia & ad sectas hujusmodi querentium compellunt eos sequi comitatum hundredum & curiam quousque finem fecerint cum ipsis pro voluntate sua statutum est quod decetero hoc non fiat. Et si quis per hujusmodi falsas querimonias fuerit attachiatus replegiat districtionem suam sic captam & poni faciat loquelam coram Justitiariis coram quibus si vicecomes

"FORASMUCH as Lords of Courts, and other that keep Courts, and Stewards, intending to grieve their Inferiors, where they have no lawful mean so to do, procure other to move Matters against them, and put in Surety and other Pledges, or to purchase Writs, and at the Suit of such Plaintiffs compel them to follow the County, Hundred, Wapentake, and other like Courts, until they have made Fine with them at their Will;" 'it is ordained that it shall not be so used hereafter. And if any be attached upon such false

No. 4. 13 Edward I. st. 1, c. 36.

'Complaints, he shall replevy 'his Distress so taken, and 'shall cause the Matter to be 'brought afore the Justices, 'before whom if the Sheriff, 'Bailiff, or other Lord (after 'that the Party distrained hath 'framed his Plaint) will advow 'the Distress lawful by reason 'of such Complaints made 'unto them, and it be replied 'that such Plaints were moved 'maliciously against the Party 'by the Solicitation or Procure-'ment of the Sheriff, or other 'Bailiffs, or Lords, the same 'Replication shall be ad-'mitted; and if they be con-'vict hereupon, they shall 'make Fine to the King, and 'nevertheless restore treble 'Damages to the Parties grie-'ved.'

*Ex Rot. in Turr.* Lond.

vel alius ballivus vel dominus postquam sic districtus formaverit querimoniam suam advocaverit justam districtionem ratione hujusmodi querimoniarum coram eis factarum & replicetur quod hujusmodi querimonie versus eos movebantur malitiose ad instantiam seu procurationem vicecomitis aut aliorum ballivorum aut dominorum admittatur illa replicatio Et si super hoc convicti fuerint versus dominum regem redimantur et nichilominus hujusmodi sic gravatis dampna in triplo restituant.

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## No. 5.

13 Edward I. stat. 1. (Westminster second) c. 37.—No Distress shall be taken but by Bailiffs known and sworn.

No. 5. 13 Edward I. st. 1. c. 36.

'FORASMUCH also as 'Bailiffs, to whose Office 'it belongeth to take Distress-'es, intending to grieve their 'Inferiors, that they may ex-'act Money of them, do send Strangers to take Distresses, 'to the Intent that they might 'grieve their Inferiors, by 'reason that the Parties so 'distrained, not knowing such 'Persons, will not suffer the 'Distresses to be taken;" 'it is provided, That no Distress shall be taken but by Bailiffs sworn and known. And if they which do distrain do otherwise, and thereof be convict (if the Parties grieved will purchase a Writ of

QUIA etiam ballivi ad quos ex officio pertinet districtiones facere volentes subditos suos gravare ut ab eis pecuniam extorqueant mittunt ignotos ad faciend' districtiones ea intentione ut subditos gravare possint per hoc quod sic districti non habentes notitiam personarum non permittunt hujusmodi districtiones super eos fieri statutum est quod nulla districtio fiat nisi per ballivos juratos et notos. Et distringentes si alio modo fecerint & de hoc convicti fuerint si gravati breve de Transgressione impetraverint restituant gravatis dampna & versus Regem graviter puniantur.

'Trespass) they shall restore 'Damages to the Parties grieved, and besides, shall be 'grievously punished towards 'the King.' No. 5. 13 Edward I. st. 1. c. 37.

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## No. 6.

### 18 Edward II.—The Statute for View of Frankpledge.

Cotton *MS. Claudius*, D. 2.

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| PRIMES vous nous dirrez per le serement qe vous nous avez fait si touz les seutours qi devent suite a ceste Courte soient venuz come venir deivent & queux ne sount mie. | 'FIRST, you shall say unto 'us by the Oath that you 'have made, If all the Jurors 'that owe Suit to this Court be 'come, and which not. No. 6. 18 Edward II. |
| 2. Et si touz les chiefs plegges soient venuz come venir deivent et queux nempe. | '2. And if all the chief 'Pledges be come, as they 'ought to come, and which 'not. |
| 3. Et si touz de xii. annz soient en lassise nostre Seignur le Roi et queux ne sount mie & qi les receite. | '3. And if all the Dozeins 'be in the Assise of our Lord 'the King, and which not, 'and who received them. |
| 4. Et sil neit nul des villeins le Seignur futif aillours menaunt qen le demeigne le Roi. | '4. And if there be any of 'the King's Villains fugitive 'dwelling otherwere than in 'the King's Demeans, and of 'such as be within the King's 'Demeans, and have not abiden a Year and a Day. |
| 5. De ceux qi sount en les demeignes le Roi & nount mye demurre un an & un jour. | '† 5. *And if there be any of 'the Lords Villains in Frankpledge otherwise than in this 'Court.* † *Not in Orig.* |
| 6. Des custumes & des services duez au ceste Courte sustretes comment & per qi & en temps de quel baillif. | '6. Of Customs and Services due to this Court withdrawn, how, and by whom, 'and in what Bailiffs Times. |
| 7. Des purprestures faites en terres & en ewes a nusance. | '7. Of Purprestures made 'in Lands, and Waters to 'Annoyance. |
| 8. Des mures maisons haez fosses levez ou abatuz a nusance. | '8. Of Walls, Houses, 'Dikes, and Hedges set up or 'beaten down to Annoyance. |
| 9. Des boundes tretz et emportez. | '9. Of Bounds withdrawn 'and taken away. |
| 10. Des voies & des Sentes stopez ou amenusez. | '10. Of Ways and Paths 'opened or stopped. |

No. 6.
28 Edward II.

| | Cotton *MS. Claudius*, D. 2. |
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| ' 11. Of Waters turned or ' stopped, or brought from their ' right Course. | 11. Des ewes destournez ou amenusez hors de lour droit cours. |
| ' 12. Of Breakers of Hou- ' ses, and of their Receivers. | 12. Des Brusours des me- sons & de lour receitours. |
| ' 14. Of Petty Larons, as of Geese, Hens, or Sheafs. | 14. Des petitz Larouns come de howes galines & garbes. |
| ' 15. Of Thieves that steal ' Clothes, or of Thieves that ' do pilfer Clothes through ' Windows and Walls. | 15. Des Larons qi sakent draps ou autres choses parmi fenestres on parraies. |
| ' 16. Of such as go in Mes- ' sage for Thieves. | 16. De ceux qi vount en message des larouns. |
| ' 17. Of Cries levied and ' not pursued. | 17. De huteis leve & nemie pursue. |
| ' 18. Of Bloodshed, and of ' Frays made. | 18. De saunk espandu & plaie faite. |
| ' 19. Of Escapes of Thieves ' or Felons. | 19. De eschap de laroun & de feloun. |
| ' 20. Of Persons outlawed ' returned, not having the ' King's Warrant. | 20. Des utlagez repeire[illegible] saunz garaunt. |
| ' 21. Of Women ravished ' not presented before the Co- ' roners. | 21. De rape de femme q[illegible] nest mye present devaunt Co- roners. |
| ' 22. Of Clippers and For- ' gers of Money. | 22. De retondours & de fausours de la monoye. |
| ' 23. Of Treasure found. | 23. De tresor trove. |
| ' 24. Of the Assise of Bread ' and Ale broken. | 24. De assise de pein & de servois enfreinte. |
| ' 25. Of false Measures, as ' of Bushels, Gallons, Yards, ' and Ells. | 25. Des faux mes[illegible] come des busselx galouns verge aunes. |
| ' 26. Of false Balances and ' Weights. | 26. De faux balaunces & de faux pois. |
| ' 27. Of such as have dou- ' ble Measure, and buy by the ' great, and sell by the less. | 27. De ceux qi ount double mesure & achatent per le greindour & vendent per le meindre. |
| ' 28. Of such as continually ' haunt Taverns, and no Man ' knoweth whereon they do ' live. | 28. De ceux qi assiduelment hauntent les tavernes & homme ne soit dount ils vivent. |
| ' 29. Of such as sleep by ' Day and Watch by Night, ' and eat and drink well, and ' have nothing. | 29. De ceux qi dorment les jours & veillent les nuiz & mangent bien & beivent bien & nount nul bien. |
| ' 30. Of Cloth-sellers and ' Curriers of Leather dwel- ' ling out of Merchant Towns. | 30. Des dobbours des draps & des curreours des quirs ail- lours qen ville marchaunde. |

Cotton *MS. Claudius*, D. 2.

31 De ceux qi fuent a legliſes & per eux sen vount saunz faire quappent Sil ny eit nulle femme putiene per qoi le Seignur purra perdre.

32. Et des gentz emprisonez & puis lessez saunz garrant.

33. De ceux qi prenent columbes en iveer per laces ou per autre engine.

34. De touz ceux nous faites assavoir per le serement qe veus nous avez fait.

'31. Of such as flie into 'Church or Church-yard, and 'after depart without doing 'that which belongeth thereunto. — No. 6. 18 Edward II.

'32. Of Persons imprisoned, and after let go without 'Mainprize.

'33. Of such as take Doves 'in Winter by Doorfalls or 'Engines.

'34. And of all these 'Things you shall do us to wit, 'by the Oath you have taken.'

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## No. 7.

ichard II. c. 12. — No Man shall be compelled to answer for his Freehold before the Council of any

*Turr.* Lond.

.M a la grevouse compleint des Communes fait plein parlement de ce qe ...rs lige du Roi sont faitz ... devaunt les conseils de ...es Seignurs & Dames ... respondre de lour frank ...ment & de plusours autres ... reales & personeles qe de ...roient estre demesnez par ...ey de la terre encontre le ...tat & droit de nostre Seignur le Roi & de sa corone & en defesance de la commune ley accordez est & assentuz qe null lige du Roi desore enavant soit artez compellez ne constr...int par nulle voie de venir ne dapparoir devaunt le conseill dascun Seignur ou dame pur y respondre de son frank tenement ne de chose qe touche frank tenement ne de nulle autre chose reale ou personele aqappartient a la ley de la terre en ascune manere. Et si ascun se sent grevez en temps avenir encontre ceste

" ITEM, at the grievous " Complaint of the Commons made in full Parliament, " for that divers of the King's " Subjects be caused to come " before the Council of divers Lords and Ladies, to " answer for their Freehold, " and so for divers other " Things, real and personal, " that ought to be ordered by " the Law of the Land, against " the Estate and the Right of " our Lord the King and of " his Crown, and in defeating " of the common Law;" 'it is 'agreed and assented, That 'from henceforth none of the 'King's Subjects be compelled, 'neither by any Mean constrained, to come nor to appear before the Council of 'any Lord or Lady, to answer 'for his Freehold, nor for any 'Thing touching his Freehold, 'nor for any other Thing real 'or personal, that belongeth to 'the Law of the Land in any — No. 7. 15 Richard II. c. 12.

No. 7. 15 Richard II. c. 12.

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| 'Manner. And if any find 'himself grieved in Time to 'come, contrary to this Ordi-'nance and Agreement, he 'may complain to the Chan-'cellor for the Time being, 'and he shall give him Re-'medy.' | *Ex Rot. in Turr.* Lond. ordeinance & accorde sue al Chaunceller qi serra pur le temps & il en serra remede. |

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No. 8.

16 Richard II. c. 2.—The Forfeiture of him that compelleth any Person to answer for his Freehold.

No. 8. 16 Richard II. c. 2. A Confirmation of the Statute of 15 R. 2. c. 12. with a Penalty on the Offenders.

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| "ITEM, Whereas at the "last Parliament it was "accorded and assented, That "none of the King's liege "People from henceforth "should be bound, compelled, "nor constrained by any "Means, to come nor to "appear before any Lord's "or Lady's Council, there "to answer of his Freehold, "nor of Things which touch "Freeholds, nor of any other "Thing real nor personal, "which belongeth to the Law "of the Land in any wise, as "by the Statute thereof made "more fully appeareth;" 'it 'is accorded and assented, 'That the said Statute shall be 'firmly holden and kept; and 'if any Lord or Lady, or other 'of the King's liege People do 'to the contrary, they shall 'incur the Pain of *xx l.* to the 'King.' | ITEM come el darrein parlement accordez estoit & assentuz que nulle lige du Roi delors en avant serroit artez compellez ne constreint par nulle voie de venir ne dapparoir devaunt le conseill dascun Seignur ou Dame pur y responddre de son franc tenement ne de chose qi touche frank tenementz ne de nulle autre chose reale ou personele quappartient a la ley de la terre en aucun manere sicome par lestatut ent fait pluis pleinement appiert accordes est & assentuz qe le dit estatut soit fermement tenuz & gardez & qe si ascun Seignur ou Dame ou autre liege du Roi face alencontre encourge la peine de vint livres devers nostre Seignur le Roy. |

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No. 9.

4 Henry IV. c. 19.—No Officer of a Lord of a Franchise shall be Attorney in the same.

No. 9. 4 Henry IV. c. 19.

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| 'ITEM, it is ordained, That 'no Steward, Bailiff, nor 'Minister of Lords of Fran- | ITEM ordeignez est & establiz qe nul seneschall baillif ne ministre des Seignurs des |

*Ex Rot. in Turr.* Lond.

franchises quont retourne du brief soit attornee en nul plee deinz la franchise ou baillie dont il est ou serra tiel officer ou ministre en aucun temps advenir.

' chises, which have Return of ' Writs, be Attorney in any ' Plea within the Franchise or ' Bailiwick whereof he is or ' shall be Officer or Minister, ' in any Time to come.'

No. 9. 4 Henry IV. c. 19.

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## No. 10.

## 17 Edward IV. c. 2.—For Courts of Pipowders.

Cotton *MS.*

ITEM qe come diverses feires sount tenuz & gardez en cest Roialme, ascuns per prescription allowez devaunt Justices in Eyre, & ascuns per graunt nostre Seignur le Roy quorest, & ascuns per graunt de ses nobles progenitors & predecessours: Et a ascun ou chescune des mesmes les feires est de droit apperteignaunt un Court de Peepowders, a ministrer en ceo due Justice en celle partie, en quele court il y ad toutz jours este accustume, qe chescune persone venaunt as tielx feires arroit loial remedie des toutz maners contractes, trespasses, covenauntz, dettes, & autres fetes ou autrement faits ou commys deins ascuns de les mesmes feires durant le temps mesme le feir, & deins la jurisdiction del mesme, & destre triers per marchauntz esteantz al mesme la feire; queles courtes es cests jours sount misuses per seneschallz south seneschallz baillifs commissariez & autre ministrez teignauntx et gouvernauntz les ditz courtes des ditz feires, pur lour singuler profit tenauntz plee per plaints, sibien des contractes dettes trespasses & autres fetes faitz & commise hors le temps des ditz feires ou la jurisdiction del

" ITEM, Whereas divers " Fairs be holden and " kept in this Realm, some by " Prescription allowed before " Justices in *Eyre*, and some " by the Grant of our Lord " the King that now is, and " some by the Grant of his " Progenitors and Predeces- " sors; and to every of the " same Fairs is of right pertain- " ing a Court of Pipowders, " to minister in the same due " Justice in this Behalf; in " which Court it hath been " all Times accustomed, that " every Person coming to the " said Fairs, should have law- " ful Remedy of all Manner of " Contracts, Trespasses, Cove- " nants, Debts, and other " Deeds made or done within " any of the same Fairs, du- " ring the Time of the same " Fair, and within the Jurisdic- " tion of the same, and to be " tried by Merchants being " of the same Fair; which " Courts at this Day be misused " by Stewards, Under-stew- " ards, Bailiffs, Commission- " ers, and other Ministers " holding and governing the " said Courts of the said Fairs, " for their private Profit, hold- " ing Pleas by Plaints, as well " of Contracts, Debts, Trespas- " ses, and other Feats done and

No. 10. 17 Edward IV. c. 2. In a Court of Pipowders the Plaintiff shall be sworn that the Contract was made in the Time and Jurisdiction of the same Fair.

No 10.
17 Edward IV. c. 2.

"committed out of the Time "of the said Fairs, or the "Jurisdiction of the same, "whereof of Truth they have "no Jurisdiction, surmising "the same Debts, Trespasses, "Covenants or other Deeds, "to be done within the Time "of the Fairs, or within the "Jurisdiction of the same "Fairs, where of Truth they "were not so; and sometime "by the Device of evil-dis-"posed People several Suits "be feigned, and trouble them "to whom they bear evil "Will, to the Intent that they "for Lucre may have favour-"able Inquests of those that "come to the said Fairs, where "they take their Actions. "And whereas divers Persons "coming to the same Fairs be "grievously vexed and trou-"bled by feigned Actions, and "also by Actions of Debt, "Trespasses, Deeds and Con-"tracts made and committed "out of the Time of the said "Fair, or the Jurisdiction of "the same, contrary to Equity "and good Conscience, where-"by the Lords of the same "Fairs do lose great Profit by "the not coming of divers "Merchants to their Fairs, "which by this Occasion do "abstain, and also the Com-"mons be unserved of such Stuff "and Merchandise which "otherwise would come to "some Fairs." 'Our said 'Lord the King considering 'the Premisses, by the Ad-'vice and Assent of the Lords 'Spiritual and Temporal, and 'at the Request of the Com-'mons, in the said Parliament 'assembled, and by the 'Authority of the same, 'hath ordained and estab-

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mesme, dount en verite ils ount nulle jurisdiction, surmettauntz les contractes dettes trespasses covenauntz & autre fetez estre faitz deins le temps des feires, ou deinz la jurisdiction de les mesmes feires, lou en verite ils ensi ne feussent; & ascuns foitz sur plaintez feintes per ymagination de malvais disposes peoples a troubler ceux as queux ils portent male vouluntee, a celle entent quils arroient per lucre favourables enquestes des venantz as ditz feires lou ils preignount lour actions, & perount plusours venantz as ditz feires sount grevousment vexes & troubles per actions feintes & auxi per actions des dettes trespasses fetes & contracts, faitz & commys hors del' temps des ditz feires, ou jurisdictions del mesme, contrarie equite & bon conscience, perount les Seignurs des ditz feires perdent graundes profites per noun venue des diverses marchauntz a lour feires, qi pur celle cause ceux absteinount, & auxi les Communes pur celle cause sount pire serves de tiel stuffe & marchaundise quelles autrement viendrount as ditz feires: Nostre dit Seignur le Roy, les premisses consideres, del advyce & assent des ditz Seignurs espirituelx & temporelx & a la request des Communes en le dit Parlement assembles, & per lauctorite del mesme ad ordeigne & establie qe al primer jour del May proschein veignaunt nulle seneschall, south seneschall, baillif, commissarie, ne autre ministre dautiels courtes de Peepowders, teigne plee sur ascune action al suite dascune per-

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sone ou, persones, sinon ou le pleintit ou pleintifs ou son attourny en presence del defendaunt ou defendauntz face serement sur le Seint Evangelie, sur la declaration qe le contract trespasse ou autre feet conteignuz en mesme la declaration fuist fait ou commise deins la feire temps del dit feire lou celluy preigne sa action & dedeins les boundes & jurisdiction de mesme la feire: & mesqe le dit pleintif ou pleintifs per lour serement afferme le mesme; nepurquaunt qe le dit defendaunt ou defendauntz ne soit ou soient concludez per ceo, mes que ceux poient respounder, & pleder al action, ou en abatement des pleintes, & de tender issue, qe mesme le contract trespasse ou autree feet conteignuz en tiel declaration, sur quoy le pleintif ou pleintifs declare ou declarent, ne fuist commise ne fait dedeins le temps de la feire & jurisdiction del dit feire, mes hors le temps de la feire, ou as autres lieux hors de la jurisdiction de mesme la feire, solonqe la verite en celle partie: Et sil soit ensi tries, ou qe le pleintif ou pleintifs, refuse ou refusent, ou lour attourneys, de faire les serements en fourme avauntditz; qe donqes le defedaunt ou defendaunts soit ou soient quietes dismisses & discharges en celle partie hors dicell court, le partie pleintif de prendre son avauntage a la commune ley ou autre lieu convenient, come luy semble bon, cest ordeignaunce nient contristeant. Et qe chescune seneschall, south-seneschall, baillif, commissarie, ou autre ministre teignant, rulant, ou

'lished, That from the First 'Day of *May* next ensu-'ing, no Steward, Under-'steward, Bailiff, nor Commis-'sary, nor other Minister of 'any such Courts of Pipow-'ders, shall hold Plea upon any 'Action at the Suit of any Per-'son or Persons, unless the 'Plaintiff or Plaintiffs, or his 'or their Attorney, in the Pre-'sence of the Defendant or De-'fendants, do swear upon the 'Holy Evangelists, upon the 'Declaration that the Contract 'or other Deed contained in 'the said Declaration, was 'made or committed within the 'Fair, and within the Time of 'the said Fair where he taketh 'his Action, and within the Ju-'risdiction and Bounds of the 'same Fair. And although that 'the Plaintiff or Plaintiffs by 'their Oath do affirm the same, 'yet nevertheless the said De-'fendant or Defendants shall 'not be concluded by the same, 'but may answer and plead to 'the Action, or in abatement of 'the Plaints, and to proffer an 'Issue that the same Contract, 'Trespass, or other Deed con-'tained in such Declaration, 'whereupon the Plaintiff or 'Plaintiffs do declare, was not 'committed nor done within 'the Time of the Fair, and Ju-'risdiction of the same, but out 'of the Time of the Fair, or at 'other Places out of the Juris-'diction of the same Fair, ac-'cording to the Truth in this 'Behalf. And if it be so tried, 'or that the Plaintiff or Plain-'tiffs, or their Attornies, do re-'fuse to take the Oaths in the 'Form aforesaid, that then the 'Defendant or Defendants shall 'be quite dismissed and dis-'charged in that Behalf out of

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17 Edward IV, c. 2.

No. 10.
17 Edward IV. c. 2.

The Penalty of a Steward proceeding in a Court of Pipowders, if the Plaintiff hath not deposed, that the Contract, &c. was made in the Time and Jurisdiction of the Fair.

Made perpetual by 1 R. 3. c. 6.

'the same Court, the Party 'Plaintiff to take his Remedy 'at Common Law, or other 'Place convenient, as shall to 'him seem good, notwithstanding this Ordinance. And that 'every Steward, Under-steward, Bailiff and Commissary, 'or other Minister, holding, 'ruling, or governing any of 'the said Courts, that doth the 'contrary of this Ordinance, 'shall forfeit for every Default 'in this Behalf, an hundred 'Shillings, the one Half to be 'to our Lord the King, and the 'other Half to him that will in 'this Behalf pursue his Action 'upon this Ordinance, by Action of Debt in his own Name. 'And that Writs of Proclamation be in all good Haste 'directed to every Sheriff of 'every County of *England*, to 'cause this Ordinance to be 'proclaimed in every Fair within his County, as well within 'Franchise as without. This 'Act to endure from the said 'first Day of *May*, until the 'first Day of the next Parliament. Provided always, 'That this Act, nor any thing 'comprised in the same Act, 'be hurtful or prejudicial to '*William* now Bishop of *Durham*, or to his Successors, 'within the Liberty and Franchise of the Bishoprick of '*Durham*.'

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governaunt, ascuns des ditz courts, qi face le contrarie du cest ordeignaunce, forfacera pur chescune default en celle partie Cs. lune moite ent a nostre Seignur le Roy, & lautre moite ent a celluy qi en celle partie pursuera sa action sur cest ordeignaunce per action de dette en son propre noun. Et qe briefs de proclamation soient en tout bon haste directs a chescune viscount de chescune countee d'Engleterre de faire cest ordeignaunce estre proclaymes en chescune feire deinz son countee, sibien deinz franchise come dehors: cest act dendurer a le primer jour de May avauntdit tanqe al primer jour de parlement qe proscheinement ensuera. Purveu toutz foitz, de cest act ne null chose comprise en mesme lacte, soit damageous ou prejudicialle a William ore Evesque de Durham ne ses successours deinz les liberte & fraunchise del Eveschie de Durham.

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No. 11.

1 Richard III. c. 6.—The Statute of 17 *Edward* 4. *cap* 2. rehearsed and made perpetual, *viz.* That in every Court of Pipowders the Plaintiff or his Attorney shall be sworn, *&c.*

## No. 12.

### 11 Henry VII. c. 15.—Entering of Plaints in County Courts, Examining of Sheriffs, Execution of Precepts, Viewing of Estreats, and gathering of them.

No. 12. 11 Henry VII. c. 15.

Several Misdemeanours practised by Sheriffs, &c. entering of Plaints.

'WHEREAS great Extortion is yearly used and had 'within divers Counties of this Realm of *England*, by 'the Subtilty and untrue Demeanor of Sheriffs, Under Sheriffs, 'Shire-clerks, or any other Officers holding and keeping the 'Counties in the Name of the Sheriff, that is to say, if any Man 'affirm a Plaint before the Sheriffs in the Counties, or before 'any other of the said Officers, the said Sheriff, Under Sheriff, or his Shire-clerk, will enter or cause to be entered in 'their Books, in the same Plaintiff's Name, divers and many 'Plaints both of Debt, Trespass and Covenant, at their Pleasure, and unknowing to the same Plaintiff in whose Name 'the said Plaints been affirmed, to the Intent that if the Defendant appear not at every Shire-day, or Court hanging the 'said Plaint, he shall leese for his Default made at every Plaint 'four Pence: where divers Times by Covin between the said 'Sheriffs, Under Sheriffs, Shire-clerks, and the other aforesaid Officers, the said Defendants being never attached, summoned, nor warned according to the due Form of the Common Law, wherefore the same Parties, so put in Suit, have 'no Knowledge of any such Suit had against them, and over 'that, the same Sheriffs, Under Sheriffs, and Shire-clerks will 'cause divers Plaints to be taken in the Names of such Persons 'that are not in plain Life, where the said Defendant shall 'have like Loss as is before rehearsed; so that the unlawful 'Demeanor of the said Sheriffs, Under Sheriffs, Shire-clerks 'for the Time being, and the Bailiffs of the Hundred, for their 'Default and Negligence in their Offices, and Covin between 'the said Sheriffs, Under Sheriffs, Shire-clerks, and other of 'the foresaid Officers, causeth the Amerciaments that be in the 'one Year after the Books be ingrossed, to amount to great 'and importable Sums of Money, which Sums of Money been 'yearly levied of the poor Commons in the said Counties by 'the Sheriffs, Under Sheriffs, and Shire-clerks, and other 'their Deputies being of no Substance, neither of Havour, 'which Deputies take and levy more by Extortion than is contained in their Estreats, to the express Pillage and impoverishing of the said Commons.' Be it therefore enacted, ordained, and established by the King our Sovereign Lord, and by the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That no Sheriffs, Under Sheriffs, or Shire-clerks hereafter, neither any Person in their Names, nor by their Commandment, shall take and enter any Plaints in their Books in no Man's Name, unless the Party Plaintiff be in his proper Person present in the Court, or else by a sufficient Attorney or Deputy that is known to be of good Name and

§ No Plaint shall be entered in the County Court, but where the Plaintiff or his Attorney is present.

No. 12. 11 Henry VII. c. 15.

Disposition; and that the same Party Plaintiff shall find Pledges to pursue his said Plaint, such Persons as are known there in the County; and that the Party Plaintiff shall have but one Plaint for one Trespass or Contract. And if the said Sheriffs, Under Sheriffs, Shire-clerks take and enter, or cause to be entered, any more Plaints than the Plaintiff supposeth that he hath Cause of Action against the Defendant, that then the said Sheriffs, Under Sheriffs, Shire-clerks, that do enter, or cause to be entered, any such Plaints contrary to the said Provision and Ordinance, shall forfeit for every Default *xl s.* the one Half thereof to be had to the Use of our said Sovereign Lord the King, and the other Part to him or them that will sue and prove the same Matter by Action of Debt or Information in the Exchequer. And over that, the Justices of Peace in the same Counties, and every of them, shall have Authority, upon Complaint made by the Party so unlawfully grieved, to examine the said Sheriffs, Under Sheriffs, or Shire-clerks, and Plaintiffs; and if the said Justices of Peace, or one of them, find by their Examination Default in the said Sheriffs, Under Sheriffs, or Shire-clerks, in entering of the said Plaints deceitfully, for his or their Advantage, as is before rehearsed, contrary to this present Act, that then the said Sheriffs, Under Sheriffs, and Shire-clerks, shall be convict and attaint of the same Offence, without further Inquiry or Examination, and that he shall forfeit upon the same Examination *xl. s.* to the Use of our Sovereign Lord the King for every Default. And the said Justices of Peace that so shall take the Examination, shall certify the same Examination within a Quarter of a Year into the King's Exchequer, upon Pain of *xl. s.* And furthermore, That the said Sheriffs, Under Sheriffs, and Shire-clerks, make, or cause to be made, a sufficient Precept to the Bailiffs of the said Hundreds, to attach, summon, or warn the Defendants that are so in Suit, to appear and answer to the said Plaints; and if there be any Default in the said Bailiffs of the Hundreds, in warning of the Defendants to appear and answer to the said Plaints commenced against them in their Courts, or in executing their said Office, that then the said Bailiffs shall forfeit for every Default unto our Sovereign Lord the King *xl. s.* and to be attaint and convict thereof by like Examination of the Justices of Peace, or any of them, as before is rehearsed. And that the same Sheriffs, Under Sheriffs, Shire-clerks, and their Deputies for the Time being, shall make no Estreats to levy the said Sheriffs Amerciaments, until such Time that Two Justices of Peace, whereof one shall be of the *Quorum*, have had the View and Oversight of their Books: and that the Estreats be indented betwixt the said Justices of Peace, and the said Sheriffs and Under Sheriffs, and sealed with their Seals, the one Part to remain with the said Justices, and the other Part with the said Sheriffs, or Under Sheriffs, to the Intent they may understand if any Deceit be, or untrue Demeaning in them, in making of their Books; and that those Persons which shall be Gatherers of the same Amerciaments, as Bailiffs, or other

There shall be entered but one Plaint for one Cause.

A Justice of Peace may examine the Offence, and certify it into the Exchequer.

The Penalty of Bailiffs of Hundreds that do not execute their Offices.

Two Justices of Peace shall view the Sheriff's Estreats.

Officers, be sworn by the said Justices, that they take no more Money than is forfeited and contained in the Estreats, sealed with the Seals of the said Justices of Peace, upon the same Pain of Forfeiture as before is rehearsed; thereof the same Gatherers to be convict by Examination of the said Justices of Peace, or One of them, as before is rehearsed. Provided alway, That the said Justices of Peace shall be appointed and named at the general Sessions after the Feast of Saint *Michael* the Archangel, by him that is *Custos Rotulorum* of the said Counties, or else by the eldest of the *Quorum* in his Absence, to have the Oversight and Controlment of the said Sheriffs, Under Sheriffs, and Shire-clerks, and other of the said Officers, and of the said Sheriffs Amerciaments: And the said Justices of Peace, upon Suggestion, or Information of the Party so grieved, shall make like Process as in an Action of Trespass, against the said Sheriffs, Under Sheriffs, or Shire-clerks, and other the foresaid Officers misdemeaning, as before is rehearsed, for to appear before them to answer to the said Suggestion or Information.

No. 12. 11 Henry VII. c. 15

Bailiffs shall be sworn to gather but what is due.

By whom and when the said Justices shall be named.

Process awarded by the Justices of Peace against an Offender.

## No. 13.

## 23 Henry VIII. c. 5. — The Bill of Sewers with a new Proviso, &c.

No. 13. 23 Henry VIII. c. 5.

How far the Commission of Sewers shall extend.

'OUR Sovereign Lord the King, like a virtuous and most 'gracious Prince, nothing earthly so highly weighing, 'as the advancing of the common Profit, Wealth, and Commo-'dity of this his Realm, considering the daily great Damages, 'and Losses which have happened in many and divers Parts 'of this his said Realm, as well by the reason of the outrageous 'Flowing, Surges, and Course of the Sea in and upon Marsh-'Grounds, and other low Places heretofore through politick 'Wisdom won and made profitable for the great Common 'Wealth of this Realm, as also by Occasion of Land-waters, 'and other outrageous Springs, in and upon Meadow, Pas-'tures, and other low Grounds adjoining to Rivers, Floods, 'and other Water-courses; and over that, by and through 'Mills, Mill-dams, Wears, Fishgarths, Kedels, Gores, Gotes, 'Floodgates, Locks, and other Impediments in and upon the 'same Rivers and other Water-courses, to the inestimable 'Damages of the Common Wealth of this Realm, which daily 'is likely more and more to increase, unless speedy Redress 'and Remedy be in this Behalf shortly provided: Wherein 'albeit that divers and many Provisions have been before this 'Time made and ordained, yet none of them are sufficient 'Remedy for Reformation of the Premisses,' hath therefore by deliberate Advice and Assent of his Lords Spiritual and Temporal, and also his loving Commons, in this present Parliament assembled, ordained, established, and enacted, That Commissions of Sewers, and other the Premisses, shall be directed in all Parts within this Realm from time to time, where and when Need

No. 13. 23 Henry VIII. c. 5.

shall require, according to the Manner, Form, Tenor, and Effect, hereafter ensuing, to such substantial and indifferent Persons as shall be named by the Lord Chancellor and Lord Treasurer of *England*, and the Two Chief Justices for the time being, or by Three of them, whereof the Lord Chancellor to be One.

The Form of the Commission of Sewers.

II. *Henry* the Eighth, &c. Know ye, That forasmuch as the Walls, Ditches, Banks, Gutters, Sewers, Gotes, Calcies, Bridges, Streams, and other Defences, by the Coasts of the Sea, and marish Ground, lying and being within the Limits of A. B. or C. in the County or Counties of or in the Borders or Confines of the same, by Rage of the Sea, flowing and reflowing, and by Mean of the Trenches of fresh Waters descending, and having Course by divers Ways to the Sea, be so dirupt, lacerate, and broken; and also the common Passages for Ships, Balangers, and Boats, in the Rivers, Streams, and other Floods, within the Limits of A. B. or C. in the County or Counties of or in the Borders or Confines of the same, by Mean of setting up, erecting, and making of Streams, Mills, Bridges, Ponds, Fish-garths, Milldams, Locks, Hebbing-wears, Hecks, and Flood-gates, or other like Lets, Impediments, or Annoyances, be letted and interrupted, so that great and inestimable Damage, for Default of Reparation of the said Walls, Ditches, Banks, Fences, Sewers, Gotes, Gutters, Calcies, Bridges, and Streams; and also by Mean of setting up, erecting, making, and enlarging of the said Fish-garths, Milldams, Locks, Hebbing-wears, Hecks, Flood-gates, and other like Annoyances, in Times past hath happened, and yet is to be feared, that far greater Hurt, Loss, and Damage is like to ensue, unless that speedy Remedy be provided in that Behalf.

The several Causes of awarding the Commission of Sewers.

What Things the Commissioners of Sewers are authorized to do.

'III. We therefore, for that by Reason of our Dignity, and Prerogative Royal, we be bound to provide for the Safety and Preservation of our Realm of *England*, willing that speedy Remedy be had in the Premisses, have assigned you, and Six of you, of the which we will that A. B. and C. shall be Three, to be our Justices, to survey the said Walls, Streams, Ditches, Banks, Gutters, Sewers, Gotes, Calcies, Bridges, Trenches, Mills, Mill-dams, Flood-gates, Ponds, Locks, Hebbing-wears, and other Impediments, Lets, and Annoyances aforesaid, and the same cause to be made, corrected, repaired, amended, put down, or reformed, as Case shall require, after your Wisdoms and Discretions; and therein as well to ordain and do after the Form, Tenor, and Effect of all and singular the Statutes and Ordinances made before the first Day of *March*, in the three and twentieth Year of our Reign, touching the Premisses, or any of them, as also to enquire by the Oaths of the honest and lawful Men of the said Shire or Shires, Place or Places where such Defaults or Annoyances be, as well within the Liberties as without (by whom the Truth may the rather be known) through whose Default the said Hurts and Damages have happened, and who hath or holdeth any Lands or Tenements, or Common of Pasture, or

Inquiry by whose Defaults the Annoyances come.

'Profit of Fishing, or hath or may have any Hurt, Loss or 'Disadvantage by any Manner of Means in the said Places, as 'well near to the said Dangers, Lets, and Impediments, as 'inhabiting or dwelling thereabouts, by the said Walls, Ditches, 'Banks, Gutters, Gotes, Sewers, Trenches, and other the said 'Impediments and Annoyances; and all those Persons, and 'every of them, to tax, assess, charge, distrain, and punish, 'as well within the Metes, Limits, and Bounds of old Time 'accustomed, or otherwise, or elsewhere within our Realm of '*England*, after the Quantity of their Lands, Tenements, and 'Rents, by the Number of Acres and Perches, after the Rate of 'every Person's Portion, Tenure, or Profit, or after the Quan-'tity of their Common of Pasture, or Profit of Fishing, or other 'Commodities there, by such Ways and Means, and in such Man-'ner and Form, as to you, or six of you, whereof the said A. B. 'and C. to be three, shall seem most convenient to be ordained 'and done for Redress and Reformation to be had in the Pre-'misses; and also to reform, repair and amend the said Walls, 'Ditches, Banks, Gutters, Sewers, Gotes, Calcies, Bridges, 'Streams, and other the Premisses, in all Places needful; and 'the same, as often, and where Need shall be, to make new, 'and to cleanse and purge the Trenches, Sewers, and Ditches, 'in all Places necessary; and further to reform, amend, pros-'trate and overthrow all such Mills, Streams, Ponds, Locks, 'Fish-garths, Hebbing-wears, and other Impediments and 'Annoyances aforesaid, as shall be found by Inquisition, or by 'your Surveying and Discretions to be excessive or hurtful; and 'also to depute and assign diligent, faithful, and true Keepers, 'Bailiffs, Surveyors, Collectors, Expenditors, and other Minis-'ters and Officers, for the Safety, Conservation, Reparation, 'Reformation, and making of the Premisses, and every of them, 'and to hear the Account of the Collectors, and other Ministers 'of and for the Receipt, and laying out of the Money that shall 'be levied and paid in, and about the making, reforming, re-'pairing and amending of the said Walls, Ditches, Banks, 'Gutters, Gotes, Sewers, Calcies, Bridges, Streams, Trenches, 'Mills, Ponds, Locks, Fish-garths, Flood-gates, and other 'Impediments and Annoyances aforesaid; and to distrain for the 'Arrearages of every such Collection, Tax, and Assess as often 'as shall be expedient, or otherwise to punish the Debtors and 'Detainers of the same, by Fines, Amerciaments, Pains, or 'other like Means, after your good Discretions; and also to ar-'rest and take as many Carts, Horses, Oxen, Beasts, and other 'Instruments necessary, and as many Workmen and Labourers 'as for the said Works and Reparations shall suffice, paying 'for the same competent Wages, Salary, and Stipend in that 'Behalf; and also take such and as many Trees, Woods, 'Underwoods, and Timber, and other Necessaries, as for the 'same Works and Reparations shall be sufficient, at a reason-'able Price, by you, or Six of you, of the which we will that A. 'B. and C. shall be Three, to be assessed or limited, as well 'within the Limits and Bounds aforesaid, as in any other

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Assessing the Person to be contributory to the Charge.

Appointing of Bailiffs, Collectors, Surveyors, and other inferior Officers.

Distraining for the Arrearages of the Money assest.

Taking of Labourers, Workmen, and Carriages, Timber, and other Necessaries.

No. 13. 23 Henry VIII. c. 5.

To make Statutes and Ordinances.

'Place within the said County or Counties near unto the said 'Places; and to make and ordain Statutes, Ordinances, and 'Provisions from time to time, as the Case shall require, for 'the Safeguard, Conservation, Redress, Correction, and Re-'formation of the Premisses, and of every of them, and 'the Parts lying to the same, necessary and behooful, after the 'Laws and Customs of *Rumney* Marsh in the County of *Kent*, 'or otherwise by any Ways or Means after your own Wisdoms 'and Discretions; and to hear and determine all and singular 'the Premisses, as well at our Suit, as at the Suit of any 'other whatsoever complaining before you, or Six of you, 'whereof A. B. and C. shall be Three, after the Laws and 'Customs aforesaid, or otherwise by any other Ways or 'Means after your Discretions; and also to make and direct all 'Writs, Precepts, Warrants, or other Commandments by 'Virtue of these Presents, to all Sheriffs, Bailiffs, and all 'other Ministers, Officers, and other Persons, as well within 'Liberties as without, before you, or Six of you, whereof the 'said A. B. and C. to be Three, at certain Days, Terms, 'and Places to be prefixed, to be returned and received; and 'further to continue the Process of the same, and finally to 'do all and every Thing and Things as shall be requisite 'for the due Execution of the Premisses, by all Ways and 'Means after your Discretions: And therefore we com-'mand you, that at certain Days and Places, when and where 'ye, or six of you, whereof the said A. B. and C. to be three, 'shall think expedient, ye do survey the said Walls, Fences, 'Ditches, Banks, Gutters, Gotes, Sewers, Calcies, Ponds, 'Bridges, Rivers, Streams, Water-courses, Mills, Locks, 'Trenches, Fish-garths, Flood-gates, and other the Lets, Im-'pediments, and Annoyances aforesaid, and accomplish, ful-'fil, hear, and determine all and singular the Premisses in due 'Form, and to the Effect aforesaid, after your good Discre-'tions; and all such as ye shall find negligent, gainsaying, or 'rebelling in the said Works, Reparations or Reformations 'of the Premisses, or negligent in the due Execution of this our 'Commission, that ye do compel them by Distress, Fines, and 'Amerciaments, or by other Punishments, Ways, or Means, 'which to you, or six of you, whereof the said A. B. and C. 'shall be three, shall seem most expedient for the speedy 'Remedy, Redress and Reformation of the Premisses, and due 'Execution of the same; and all such Things as by you shall 'be made and ordained in this Behalf, as well within Liberties 'as without, ye do cause the same firmly to be observed, doing 'therein as to our Justice appertaineth after the Laws and Sta-'tutes of this our Realm, and according to your Wisdoms and 'Discretions.

Awarding of Writs and Precepts to Sheriffs, Bailiffs, and others.

To compel others to obey their Orders.

Sheriffs to return before the Commissioners such Jurors as shall be fit for Inquiry.

'IV. Saved always to us such Fines and Amerciaments 'as to us thereof shall belong; and we also command our She-'riff or Sheriffs of our said County or Counties of 'that they shall cause to come before you, or six of you, of the 'which A. B. and C. to be three, at such Days and Places as

'ye shall appoint to them, such and as many honest Men of his 'or their Bailiwick, as well within the Liberties as without, 'by whom the Truth may best be known, to inquire of the 'Premisses; commanding also all other Ministers and Officers, 'as well within Liberties as without, that they, and every of 'them, shall be attendant to you in and about the due Execu- 'tion of this our Commission. In witness whereof we have 'caused these our Letters Patents to be made. Witness our- 'self at *Westminster*, the Day of in the 'Year of our Reign.'

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All other Officers shall be attendant to the Commissioners.

V. And it is also enacted, That every such Person as shall be named Commissioner in the said Commission, after he hath Knowledge thereof, shall effectually put his Diligence and Attendance in and about the Execution of the said Commission, and before he shall take upon him the Execution of the said Commission, he shall take a corporal Oath before the Lord Chancellor, or before such to whom the said Lord Chancellor shall direct the King's Writ of *Dedimus potestatem* to take the same, or before the Justices of the Peace in the Quarter Sessions holden in the Shire where such Commissions shall be directed; the Tenor of which Oath hereafter ensueth:

The Commissioners shall take an Oath.

Enforced by 25 H. 8. c. 10.

'Ye shall swear, That you, to your Cunning, Wit, and 'Power, shall truly and indifferently execute the Authority to 'you given by this Commission of Sewers, without any Favour, 'Affection, Corruption, Dread, or Malice to be borne to any 'Manner of Person or Persons; and, as the Case shall require; ye 'shall consent, and endeavour yourself for your Part, to the best 'of your Knowledge and Power, to the making of such whole- 'some, just, equal, and indifferent Laws and Ordinances, as 'shall be made and devised by the most discreet and indifferent 'Number of your Fellows, being in Commission with you, for 'the due Redress, Reformation, and Amendment of all and 'every such Things as are contained and specified in the said 'Commission, and the same Laws and Ordinances to your 'Cunning, Wit, and Power, cause to be put in due Execution, 'without Favour, Meed, Dread, Malice, or Affection; as God 'you help, and all Saints.'

The Form of the Oath.

VI. And it is also enacted by the Authority aforesaid, That all and every Statute, Act, and Ordinance heretofore made concerning the Premisses, or any of them, as well in the Time of our Sovereign Lord the King that now is, as in the Time of any of his Progenitors, Kings of this Realm of *England*, not being contrary to this present Act, nor heretofore repealed, from henceforth shall stand and be good and effectual for ever, and to be put in due Execution, according to the true Meaning and Purport of the same.

A Confirmation of other Statutes.

VII. And over that be it enacted, That the Commissioners hereafter to be named in any of the said Commissions, according to the Purport and Effect of the same Commissions, have full Power and Authority to make, constitute, and ordain, Laws, Ordinances, and Decrees, and further to do all and every Thing mentioned in the said Commission, according to the Purport, Effect, Words, and true Meaning of the same;

The Authority of the Commissioners.

No. 13. 23 Henry VIII. c. 5.

and the same Laws and Ordinances so made, to reform, repeal, and amend, and make new, from time to time, as the Cases necessary shall require in that Behalf.

The Ordinances of Commissioners upon those which refuse.

VIII. Provided alway, and it is enacted, That if any Person or Persons, being assessed or taxed to any Lot or Charge for any Lands, Tenements, or Hereditaments, within the Limits of any Commission, hereafter to be directed, do not pay the said Lot and Charge according to the Ordinance and Assignment of the Commissioners, having Power of the Execution of the said Commission, by Reason whereof it shall happen, the said Commissioners having Power of the Execution of such Commission, for Lack of Payment of such Lot and Charge, to decree and ordain the same Lands, Tenements, and Hereditaments from the Owner or Owners thereof, and their Heirs, and the Heirs of every of them, to any Person or Persons for Term of Years, Term of Life, in Fee-simple or in Tail, for Payment of the same Lot and Charge, that then every such Decree and Ordinance so by them made and ingrossed in Parchment, and certified under their Seals into the King's Court of Chancery, with the King's Royal Assent had to the same, shall bind all and every Person and Persons, that at the making of the same Decree had any Interest in such Lands, Tenements, or Hereditaments, in Use, Possession, Reversion, or Remainder, their Heirs and Feoffees, and every of them, and not to be in any wise reformed, unless it be by Authority of Parliament hereafter to be summoned and holden within this Realm.

Extended to Copyhold Lands 7 Ann. c. 10.

The Commissioners Decree shall bind the Land.

IX. And also it is provided by Authority aforesaid, That the same Laws, Ordinances, and Decrees to be made and ordained by the said Commissioners, or six of them, by Authority of the said Commission, shall bind as well the Lands, Tenements, and Hereditaments of the King our Sovereign Lord, as all and every other Person and Persons, and their Heirs, for such their Interest as they shall fortune to have, or may have, in any Lands, Tenements, or Hereditaments, or other casual Profit, Advantage, or Commodity whatsoever they be, whereunto the said Laws, Ordinances, and Decrees shall in any wise extend, according to the true Purport, Meaning, and Intent thereof.

No Man may sit being unsworn.

X. And it is furthermore by the Authority aforesaid, established and enacted, That if any Manner of Person or Persons, of what Estate or Degree soever he or they be of, that from henceforth do take upon him or them to sit by Virtue of any of the said Commissions, not being before sworn in Form as is aforesaid, and according to the Tenor of the Oath before specified, or if any Person so named and sworn do sit as is aforesaid, not having Lands and Tenements, or other Hereditaments in Fee-simple, Fee-tail, or for Term of Life, to the clear yearly Value of *xl.* Marks above all Charges to his Use, except he be resiant and free of any City, Borough, or Town Corporate, and have moveable Substance of the clear Value of One Hundred Pounds, or else be learned in the Laws

What Land each Commissioner shall have.

of this Realm in and concerning the same, that is to say, admitted in one of the four principal Inns of Court for an utter Barrister, shall forfeit *xl. l.* for every Time that he shall attempt so to do; the one Half thereof to be to our Sovereign Lord the King, and the other Half thereof to the Use of him or them that will sue therefore by Action of Debt, Bill, Plaint, or Information in any of the King's Courts; in which Action or Suit no Wager of Law shall be admitted, nor any Essoin or Protection shall be allowed. No. 13. 23 Henry VIII. c. 5.

XI. And if any Action of Trespass, or other Suit shall happen to be attempted against any Person or Persons for taking any Distress, or any other Act doing, by Authority of the said Commission, or by Authority of any Laws or Ordinances made by virtue of the said Commission, the Defendant or Defendants in any such Action shall and may make Avowry, Conusance, or Justification for the taking of the same Distress, or other Act doing touching the Premisses, or of any of them, alledging in such Avowry, Conusance, or Justification, that the said Distress, Trespass, or other Act whereof the Plaintiff complaineth, was done by the Authority of the Commission of Sewers for Lot or Tax assessed by the said Commission, or for such other Act or Cause as the said Defendant did by Authority of the same Commission, and according to the Tenor, Purport, and Effect of this present Act made the three and twentieth Year of the Reign of our Sovereign Lord King *Henry* the Eighth, without any Expressing or Rehearsal of any other Matter or Circumstance contained in this present Act, or any Commission, Laws, Statutes, or Ordinances thereupon to be made; whereupon the Plaintiff shall be admitted to reply, that the Defendant did take the said Distress, or did any other Act or Trespass supposed in his Declaration of his own Wrong, without any such Cause alledged by the said Defendant; whereupon the Issue in every such Action shall be joined, to be tried by Verdict of twelve Men, and not otherwise, as is accustomed in other personal Actions: And upon the Trial of that Issue, the whole Matter to be given on both Parties in Evidence according to the very Truth of the same.

Avowry or Justification of a Distress taken by reason of the Commission of Sewers.

XII. And after such Issue tried for the Defendant, or Nonsuit of the Plaintiff after Appearance, the same Defendant to recover Treble Damages by reason of his wrongful Vexation in that Behalf, with his Costs also in that Part sustained, and that to be assessed by the same Jury, or Writ to inquire of Damages, as the Cause shall require.

Damages with Costs.

XIII. And it is also enacted, That every of the said Commissioners shall have and perceive four Shillings for every Day that they shall take Pain in the Execution of this Commission of Sewers, and one Clerk, by them to be assigned, two Shillings for every Day, of the Rates, Taxes, Lots, and Wains that shall be assessed or lost by the Authority of the said Commission, and to be levied and paid by their Discretions. And that the said Commissioners, or six of them, shall have Power and Authority to limit and assign of the same Rates, Taxes,

Fees, &c.

No. 13. 23 Henry VIII. c. 5.

Lots, and Wains, by their Discretions, such reasonable Sums of Money to the said Clerk, for Writing of Books and Process concerning the Premisses, and to the Collectors, Expenditors, and such other as shall take Pain in the due Execution of the said Commission, as by the Discretions of the said Commissioners, or six of them, shall be thought reasonable.

Commissions within the Liberty of the Duchy.

XIV. Provided alway, that whensoever, and as often as such Commission, as is afore limited, shall be made and directed to any Person or Persons, for the Reformation and Amendment of or in any of the Premisses specified in the said Commission, within the Fees, Liberties or Possessions of the Duchy of *Lancaster*, that then such Commissionsers as shall execute such Commission, shall be always named and appointed by the Discretion of the Lord Chancellor and Lord Treasurer of *England*, and the said Two Chief Justices of either Bench, and the Chancellor of the said Duchy for the Time being, or Three of them, whereof the said Lord Chancellor and the Chancellor of the Duchy to be Two; and that in every such Case two Commissions shall be awarded and made according to the Tenor of the Commission above expressed, One thereof under the Great Seal of *England*, and the other under the Seal of the same Duchy as before-time hath been accustomed; any Thing afore rehearsed in this Act to the contrary hereof notwithstanding.

The Charge of the Commissions.

XV. And it is further enacted, That the said Commissions from time to time, as the Case shall require, shall be had and obtained without any Money, or other Charge to be paid for the Seals or Writing of the same, unless it be to the King, Two Shillings Sixpence for the Seal of every Commission, as hath been accustomed, and for the writing and inrolling of any one Commission, Five Shillings, and not above.

A Commission of Sewers shall endure three Years.

Altered by 13 El. c. 9. s. 1.

A Commission or Commissioner discharged by Supersedeas.

XVI. And it is further enacted, That every Commission to be made by Authority of this Act shall endure and continue for the Term of Three Years next after the *Teste* of the Commission; nevertheless, after any Commission made and delivered out of the King's Court of Chancery, the King's Highness shall always, at his Pleasure, by his Writ of *Supersedeas* out of his said Court of Chancery, at any Time discharge as well every such Commission as every Commissioner that shall be made or named by Authority of this Act; after which Discharge the said Commissioner shall have no Power or Authority to proceed in the Execution of their Commission, nor in any Thing, by Authority of this Act.

How long the Commissioners Decree shall endure.

Altered by 13 El. c. 9. s. 1.

XVII. Provided always, That such Laws, Acts, Decrees, and Ordinances as shall happen to be made by the said Commissioners, according to the Tenor of their Commission, or by Authority of this Act, shall stand good and effectual, and be put in due Execution so long Time as their Commission endureth, and no longer; except the said Laws and Ordinances be made and engrossed in Parchment, and certified under the Seals of the said Commissioners into the King's Court of Chancery, and then the King's Royal Assent be had to the same;

any Thing contained in this present Act to the contrary hereof notwithstanding.

No. 13. 23 Henry VIII. c. 5.

Commissions into a County Palatine.

XVIII. Provided also, That whensoever and as often as such Commission as is afore limited shall be made and directed to any Person or Persons for the Reformation and Amendment of or in any of the Premisses specified in the said Commission, within the Fees, Liberties and Possessions of the Principality of *Wales*, the County Palatine of *Chester*, or within the Fees, Liberties, and Possessions of any other Place where there is Liberty and Jurisdiction of County Palatine, That in every such Case Two Commissions shall be awarded and made according to the Tenor of the Commission above expressed, One thereof under the Great Seal of *England*, and the other under the usual Seal of the County Palatine, in Manner and Form as is above provided for the Duchy of *Lancaster*; any Thing afore rehearsed in this present Act to the contrary notwithstanding.

The King's Royal Assent shall be certified into the Chancery.

Altered by 13 El. c. 9. s. 1.

XIX. And it is provided, and also enacted, that the Royal Assent limited to be had unto the Laws and Ordinances to be made by the said Commissioners, as is above said, shall be certified into the said Court of Chancery under the King's Privy Seal; and that there shall not any Sum of Money be paid for the same Privy Seal; but for the writing of the same Certificate under the said Privy Seal shall be paid to the Writer thereof *ii. s.* and not above, nor no other nor greater Sum for any Thing touching or concerning the same Certificate under the same Privy Seal.

Commissions in Wales and Counties Palatine.

XX. Provided alway, That the Chancellors and such other as shall have the Custody of the Seals of the said Principality of *Wales*, or the County Palatine of *Chester*, or within the Fees, Liberties, and Possessions of any other Place where there is Liberty and Jurisdiction of County Palatine, upon reasonable Request, and upon the Sight of the Commission under the King's Great Seal of his Chancery, shall without Delay make out another Commission under the Seal of the said County Palatine, according to the Tenor of the King's Commission to them shewed under his Great Seal; and to those Commissioners as shall be named by the Lord Chancellor, Lord Treasurer, and the Two Chief Justices, or by three of them, whereof the Lord Chancellor to be one, except it be within the Fees and Liberties of the Duchy of *Lancaster*, within which Fees and Liberties the Commissioners shall be named, and Commissions made, as is afore ordained by this Act; any Thing contained in the said Act, or in any Proviso thereunto added or annexed, to the contrary thereof notwithstanding. This Act to endure for Twenty Years.

Made perpetual by 3 and 4 Ed. 6. c. 8. and explained by 3 Jac. 1. c. 14.

## No. 14.

### 2 and 3 Edward VI. c. 25.—A Bill for keeping of County Courts.

No. 14.
2 & 3 Edward VI. c. 25.
Sheriffs shall keep their County-Courts monthly.

'WHERE heretofore in the most Part of all the Shires and 'Counties within this Realm, the County Court is and 'hath been usually kept and holden from Month to Month, 'and so at every Month's End one County; yet albeit in some 'Counties (though not many) the said County-Courts are hol-'den from six Weeks to six Weeks, by Force whereof the 'Officers award out Process as well for the King as Process of 'the Peace, out of the King's Bench, as also other common 'Process betwixt Party and Party, and the Attornies and Soli-'citors, who sue the same, not knowing the private Custom of 'those particular Shires, which have and use their Counties to 'be holden every six Weeks, give their Process like Return as 'in those Shires which have common Custom to hold and keep 'County-Courts every Month; whereby the King's Suits be 'not only deferred, the Plaintiffs and Demandants delayed of 'their lawful Actions and Demands, but also the said Plaintiffs 'and Demandants thereby put to double Cost and Charge, to 'the great Ignominy and Slander of the Law, incouraging of 'the Offenders and Transgressors, and to the continual Impove-'rishing of all those who have Cause of Suit:'

County-Courts shall be kept monthly.

II. In Consideration whereof, be it enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *October* next ensuing this present Session of Parliament, no County-Court or Courts hereafter to be kept within this Realm shall be longer deferred but one Month from Court to Court, and so the said Courts from thenceforth shall be kept every Month and none otherwise; any Usage, Custom, Statute or Law heretofore had or made to the contrary in any wise notwithstanding.

Where the County-Court Northumberland shall be kept.

III. And be it further enacted by the Authority aforesaid, That the Sheriff of *Northumberland* from thenceforth shall keep the County-Court of that Shire in the Town or Castle of *Alnewick* and in none other Place; any latter Use lately begun and brought in to the contrary notwithstanding.

## No. 15.

### 1 James I. c. 5.—An Act to prevent the Over-charge of the People by Stewards of Court Leets and Court Barons.

No. 15.
1 James I. c. 5.

'WHEREAS the King's most Excellent Majesty, the 'Lords Spiritual and Temporal, and other his High-'nesses Subjects of this Realm of *England* and *Wales*, have in

No. 15.
1 James I. c. 5.

'divers Places of the 'same many Franchises, Jurisdictions, 'Privileges and Liberties to keep Court Leets or Court Barons, 'for the true Administration of Justice, and to the punishing 'and suppressing of Offences; the Profits and Perquisites of 'which Courts have heretofore been used to be levied and col'lected by the Bailiff or other Minister of such Court, and by 'him accounted for to his Highness Progenitors, or other Lords 'or Ladies of such Courts and Manors, and as of Right 'it ought so to be: But now by Reason of the great Increase 'of People, the said Profits and Perquisites of Courts are grown 'to be of a better yearly Value than in ancient Time it hath 'been, divers that are now Stewards of such Courts have 'heretofore in their own Names, or in the Names of some 'other to their Use, obtained and gotten divers Grants of all 'the Profits and Perquisites of such Courts whereof they are 'Stewards, whereby many of his Majesty's Subjects are un'justly vexed, and by grievous Fines and Amerciaments 'unduly punished, greatly to the wronging and impoverishing 'of the Tenants and Inhabitants where such Stewards are, 'proceeding out of a greedy Desire to make and obtain an undue 'and extraordinary Gain to themselves:' It is therefore by the Authority of this present Parliament established and enacted, That no Steward, Deputy Steward, or other Under Steward of any the Courts aforesaid, shall directly or indirectly, in hi[s] own Name, or in the Name of any other, from and after th[e] Expiration of One Year next after the End of this Session of this present Parliament, take, receive, or make Benefit to his own Use, in Money, Goods, or any other Thing, to the Value of Twelve-pence or more, by virtue or colour of any Demise or Grant hereafter to be made of any the Profits or Perquisites, or Amerciaments of any such Courts whereof they are Stewards, which rightfully shall belong to the Lords of the same; upon Pain that every Steward offending contrary to the Tenor of this present Act of Parliament, shall for every such his Offence forfeit the Sum of Forty Pounds, and to be disabled ever after to be Steward of such Court, or of any other; the One Half of the Forfeiture to be to our Sovereign Lord the King's Majesty, his Heirs and Successors; the other Half to any of his Majesty's Subjects that shall complain in any of his Highness Courts of Record, by Action of Debt, Bill, Plaint, or Information; in which Suit no Essoin, Protection, Wager of Law, or other dilatory Plea shall be allowed.

The Steward of a Court shall take no Benefit of the Lord's Profits.

How the Profits and Perquisites of Courts Baron and Leets have been collected.

Oppressions done to many for the private Gain of Stewards of Courts.

A Steward of Court shall not take Benefit by the Profit of the same Court.

## No. 16.

1 James I. c. 14.—A Remedy for a Freeman of *London* to recover a Debt not exceeding Forty Shillings owing to him by another inhabiting within the said City or the Liberties: A Penalty if the Debtor do not appear before the Commissioners upon Warning; or if the Creditor or Debtor do not perform their Order; or if the Creditor, being a Freeman of *London*, do sue any other Freemen out of the same City for a Debt under Forty Shillings. Repealed by 3 Jac. I. c. 15.

* This Act, which was repealed by Stat. 3 Jac. I. c. 15, and other Provisions substituted in its Room, is the first which was passed for establishing the summary Jurisdiction of a Court of Requests.

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## No. 17.

21 James I. c. 23.—An Act for avoiding of vexatious Delays, caused by removing Actions and Suits out of inferior Courts.

No. 17. 21 James I. c. 23.

'WHEREAS there now are, and long Time have been, divers Courts of Record in divers Cities, Liberties, Towns Corporate, and elsewhere, some of them being far remote from *Westminster*, others from the Court of Grand Sessions in *Wales*, which were principally ordained for the Ease and Quiet of such as should have Occasion to sue there for Debts, Duties, and Wrongs, so that they might, with small Expences, receive Justice according to the Merits of their Causes in those inferior Courts, without being compelled to travel to *Westminster*, or the Court of the Great Sessions in *Wales*: But of late divers of his Majesty's loving Subjects, having for just and true Debts, and other good and lawful Causes, commenced Suits in such inferior Courts, and prosecuted their Actions and Suits many Times ready for Trial, and the same Causes being for the most Part but of small Value, have been removed into some of his Majesty's Courts at *Westminster*, or the Court of the Great Sessions in *Wales*; and being remanded by *Procedendo* into the same inferior Courts where the Action or Suit was first commenced, the same have been again oftentimes removed into the same or other of his Majesty's Courts at *Westminster*, or Court of the Great Sessions in *Wales*, to the intolerable Delay of Justice, and great Expences of Money, and Loss and Trouble, to those which justly and honestly by such Actions and Suits have sought only to recover or get Satisfaction for Debts, Duties, or Wrongs owing, due, or done unto them:'

II. For Remedy whereof, be it enacted by the King's most excellent Majesty, the Lords Spiritual and Temporal, and by

No. 17.
21 James I.
c. 23.

the Commons, in this present Parliament assembled, and by the Authority of the same, That no Writ or Writs of *Habeas Corpus*, *Certiorari*, or any other Writ or Writs, Process or Processes whatsoever, other than Writs of Error or Attaint, to be sued forth after the End of this present Session of Parliament, by any Person or Persons whatsoever, out of or from any of his Majesty's Courts at *Westminster*, or the Court of the Great Sessions in *Wales*, or out of any other Court or Courts having or pretending to have Power to award such Writs or Processes, to stay or remove any Action, Bill, Plaint, Suit, or Cause brought, commenced, or depending, or hereafter to be brought, commenced, or depending, in any Court or Courts of Record within any City, Liberty, Town Corporate, or elsewhere, which have or shall have Jurisdiction, Power, or Authority to hold Plea in that Action, Bill, Plaint, Suit, or Cause: The same Cause of Action, Bill, Plaint, or Suit, arising or growing within the said City, Liberty, Town Corporate, or Jurisdiction, shall, after the End of this present Session of Parliament, be received or allowed by the Steward or Stewards, Judge or Judges, or Officer or Officers of the Court or Courts wherein or to whom any such Writ or Writs shall be directed and delivered; but that he and they shall and may proceed in the said Cause or Causes as though no such Writ or Writs were sued forth or delivered to him or them, except that the said Writ or Writs be delivered to the Steward or Stewards, Judge or Judges, Officer or Officers of the said Court, before Issue or Demurrer joined in the said Cause or Causes so depending or to be depending in any such Court of Record in any City, Liberty, Town Corporate, or elsewhere, having Power ot hold such Plea, so as the said Issue or Demurrer be not joined within Six Weeks next after the Arrest or Appearance of the Defendant or Defendants to such Action or Suit commenced.

No Writ to remove a Suit commenced in an inferior Court shall be obeyed, unless it be delivered before Issue or Demurrer joined.

III. And be it further enacted by the Authority aforesaid, That if any such Action, Bill, Plaint, Suit, or Cause, which is or shall hereafter be brought, commenced, or depending in any Court of Record in any City, Liberty, Town Corporate, or elsewhere, shall, after the End of this present Session of Parliament, be removed or staid by any such Writ or Writs, Process or Processes, to be sued forth or out of any of his Majesty's Courts at *Westminster*, or the Court of the Great Sessions in *Wales*, or any other Court as aforesaid, that if afterwards the same Action, Bill, Plaint, Suit, or Cause shall be remanded or sent back again by any Writ or Writs of *Procedendo*, or other Writ whatsoever; that then the said Action, Bill, Plaint, Suit, or Cause, shall never afterwards be removed or staid before Judgment, by any Writ or Writs whatsoever to be sued forth or out of any of his Majesty's said Courts at *Westminster*, or the said Court of Great Sessions in *Wales*, or any other Court as aforesaid; any Law, Statute, Custom, Usage, or Restraint, to the contrary thereof in any wise notwithstanding.

A Suit once remanded shall never afterwards be removed.

No. 17.
21 James I. c. 23.

A Suit, when the Thing in Demand exceeds not five Pounds, shall not be removed.

IV. And be it further enacted by the Authority aforesaid, That if in any Action, Bill, Plaint, Suit, or Cause, not concerning Freehold or Inheritance, or Title of Land, Lease, or Rent, which shall be brought, commenced, or depending in any such Court of Record in any City, Liberty, Town Corporate, or elsewhere, if it shall appear, or be laid in the Declaration, that the Debt, Damages, or Things demanded, doth or shall not amount to or exceed the Sum of Five Pounds; that then such Action, Bill, Plaint, Suit, or Cause, shall not be stayed nor removed into any of his Majesty's Courts at *Westminster*, or other Courts as aforesaid, by any Writ or Writs whatsoever, to be sued or prosecuted forth or out of his Majesty's said Courts at *Westminster*, or other Courts as aforesaid, other than Writs of Error or Attaint; any Law, Statute, Usage, Custom, or Restraint, to the contrary in any wise notwithstanding.

V. And be it further enacted by the Authority aforesaid, That if any Writ or Writs whatsoever, shall be after the End of this present Session of Parliament granted or sued forth or out of any of his Majesty's said Courts at *Westminster*, or Court of the Great Sessions in *Wales*, or other Court, contrary to the Intent and Meaning of this present Act, that then it shall and may be lawful to and for the Judge or Judges, and Officer or Officers, to whom such Writ or Writs shall be directed or delivered, to disallow and refuse the same, and to proceed as if no such Writ or Writs had been granted or sued out or forth as aforesaid; any Law, Statute, Usage, Custom, or Restraint, to the contrary in any wise notwithstanding.

This Act shall only extend to Courts in Liberties, &c. and when the Steward is an Utter Barrister, &c.

VI. Provided always, That this Act shall extend only to such Courts of Record in Cities, Liberties, Towns Corporate, and elsewhere, and for so long Time only as there is or shall be an utter Barrister of three Years standing at the Bar of one of the four Inns of Court, that is or shall be Steward, Under Steward, or Deputy Steward, Town Clerk, or Judge, or Recorder of the same Inferior Court, or that is or shall be from Time to Time Assistant to such Judge or Judges of such inferior Courts as shall not be Utter Barristers of such Standing as is aforesaid, and there present, in which such Actions, Bills, Plaints, Suits, or Causes is or shall be brought, commenced or depending, and not of Counsel in any Action, Suit, or Cause then depending in the same inferior Court; any Thing in this present Act, or any Law, or other Statute, Usage, Custom, or Restraint, to the contrary in any wise notwithstanding.

This Act shall not extend to any Foreign Plea.

VII. Provided that this Act, or any Thing therein contained, shall not extend to any Action, Bill, Plaint, Suit, or Cause, wherein any such Foreign or other Plea shall be pleaded as could not be tried or determined within the Jurisdiction of such inferior Courts.

## No. 18.

### 16 Charles I. c. 15.—An Act against divers Incroachments and Oppressions in the Stannary Courts.

'WHEREAS King *Edward* the First, of famous Memory, 'did, for the Amendment of the Stannaries in the 'County of *Devon*, grant divers Franchises and Liberties to the 'Tinners there: And whereas in the Parliament in the fiftieth 'Year of King *Edward* the Third, upon the Petition of the 'Commons of the County of *Devon*, certain Branches and 'Articles of the said Charter were explained in Manner fol-'lowing, that is to say, Whereas one Article of the said Char-'ter is in these Words following,' viz. "Sciatis nos ad emen-"dationem Stannariarum nostrarum in Com. Devon. ad tran-"quillitatem & utilitatem Stannatorum nostrorum prædictorum "earundem, Concessisse pro nobis et hæredibus nostris, Quod "omnes Stannatores prædicti operantes in Stannariis illis quæ "sunt Dominia nostra, dum operantur in eisdem Stannariis, "liberi sint & quieti de placitis nativorum, & de omnibus "placitis & querelis Curiam nostram & hæredum nostrorum, "qualitercunque tangen'. Ita quod non respondeant coram "aliquibus Justiciariis vel Ministris nostris seu hæredum nos-"trorum de aliquo placito seu querela infra prædictas Stanna-"rias emergen. nisi coram Custode nostro Stannariarum nos-"trarum prædictarum, qui pro tempore fuerit (except. "placitis terr,' vitæ & membrorum) nec recedent ab opera-"tionibus suis per summonitionem alicujus Ministrorum nos-"trorum, seu hæredum nostrorum, nisi per summonitionem "communem dicti Custodis nostri; & quod quieti sint de "omnibus tallag'. Theolon. stallag. auxiliis et aliis custumis "quibuscunque in villis, portubus, feriis, & mercatis infra "Com. prædict. de bonis suis propriis, &c." 'Whereupon 'the said Commons prayed a Declaration, as followeth,' "Requeste, Sur quoi plese declarer si auters persons que les "Esteynors overantz in les Esteineryes averont et enjoyeront "la franchise grante per la dite Chartre du Roy desicome la "dite Chartre voet. Quod omnes Stannatores prædicti ope-"rantes in Stannariis illis, sint liberi, &c. Et autres persons "que les overours cestassavoir leurs Maistres que les louent & "leurs servants & autres clayment mesme la Franchise. Et "auxint plese declarer si les dites overours y averont les "Franchises que in autres temps a quant ils averont in mesme "Lesteinery desicome la Chartre voet; Dum operantur in "eisdem Stannariis sint liberi, &c." 'Upon which Request, 'Answer was made as followeth:' "Respons. En droit de les "dites paroles, operantes in Stannariis illis, & dum operantur "in eisdem Stannariis, soient clerement entenduz de operariis "laborantibus duntaxat in Stannariis illis sine fraude & dolo, "& non de aliis, nec alibi laborantibus." 'And whereas the 'said Commons prayed a farther Declaration, as solloweth.' "Requeste, Item soit declarez, si le Gardein de Lesteinery

No. 18. 16 Charles I. c. 15.

Ed. 1. Charters

Explained 50 Ed. 3.

No. 18.
16 Charles I. c. 15.

'puisse tenir plee inter Estyeinor & Forreyn de querele sourdante aillours que en les lieux ou ils sont overantz desicome 'la Chartre voet, Quod custos noster prædictus, vel ejus 'Locum-tenens teneat omnia placita inter Stannatores prædictos emergen. & etiam inter ipsos & alios forinsecos de " omnibus transgressionibus, querelis, & contractibus factis in " locis in quibus operantur infra Stannarias prædictas similiter " emergen. &c. Quare il tient plee des lieux quereles sourdantz in chescune parte deins le dit Counte." 'Upon 'which, Answer was in these Words,' " viz. Resp. Et en " droit de ceste Article, se ent extende la Jurisdiction clerement solonc' les paroles del dit Chartre, cestassavoir; in " locis ubi iidem operarii operantur, & nemy aillours ne en " autre manere." 'Which Charter so declared, was repeated 'again; and in the eighth Year of the Reign of King *Richard* 'the Second, commanded to be put in Execution.'

8 R. 2.

The like Charter to Tinners in Cornwall.

'II. And whereas the said King *Edward* the First made the 'like Charter to the Tinners of the County of *Cornwall*, 'which Charter was in the foresaid Parliament, upon the Request of the Commons of the County of *Cornwall*, declared in 'the same Manner and Words:

Declaration.

'III. And whereas the Tinners of the Counties of *Devon* 'and *Cornwall* have by virtue of the said Charters enjoyed 'divers and great Liberties, and are quit from all Tolls, Tallages, Aids and other Customs in the Vills, Ports, Fairs and 'Markets within the said Counties respectively: Which great 'Liberties do of Right belong to the working Tinner, working 'without Fraud or Deceit in the Stannaries aforesaid, and not 'to any other nor elsewhere working, and were granted to the 'said Tinners for their Encouragement in their Works: And 'whereas of late Years sundry Inhabitants within the said 'Counties, and others, to entitle themselves to the said Liberties, have by Fraud and Covin, for small or no Considerations, bought and acquired, and do buy and acquire to themselves decayed Tin-works, and small and inconsiderable Parts 'in the same and other Tin-works; which Abuses are done 'principally to enable the said false and feigned Tinners to vex 'and sue their Neighbours in the Stannary Courts, where for 'the most part the Defendant is unjustly debarred his Costs, 'although the Cause be adjudged with him; and the Jurisdiction of the said Stannaries hath, contrary to ancient Right and 'Usage, and the said Charters, been endeavoured to be extended out of the Places where the Tinners do work, through 'the whole Counties of *Devon* and *Cornwall* respectively, 'which is no way for the Benefit of his Majesty, but for the 'singular Lucre of some private Persons: And whereas by 'the said Abuses great Inconveniencies do follow, (that is to 'say) the Inhabitants of the said Counties are miserably vexed, 'oppressed and imprisoned, his Majesty defrauded of his Aids 'and Customs, and the Lords and Owners of Fairs, Markets 'and other Franchises, of their Tolls and Duties, and the 'Government of the Country exceedingly confounded and

Abuse of Liberties.

No. 18. 16 Charles I. c. 15.

'cluded, the said false and feigned Tinners claiming when they list to be Tinners, and when they list to be Foreigners; besides, that if timely Provision be not made, the certain Decay of his Majesty's Profits in the Tin-works will ensue, for that the same being divided into so many Hands and Parts, cannot conveniently be set on work, nor Contribution raised for the working of the same:'

The former Declarations confirmed.

IV. Be it therefore enacted by his Majesty, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, That the said Declarations be henceforth held and duly observed; with this, That the Words of the said Charters and Declarations, *In locis ubi operantur*, be expounded of the Vill, Tithing and Hamlet where some Tin-work in Work is situate, and not elsewhere, and no longer than the same Tin-work is or shall be in working: And if any Person or Persons that shall be sued in the said Stannaries, shall swear or tender his or their Oath in the said Court where he or they shall be sued, that he or they are not, nor is, nor at Time of the Suit commenced was not, nor were a Tinner or Tinners, then such Defendant or Defendants shall be forthwith discharged of such Suit, unless that the Plaintiff or Plaintiffs do forthwith make Oath that the said Plaintiff or Plaintiffs is or are true and working Tinners, without Fraud or Deceit, and that the Cause of his or their Suit arose within the said Stannaries, or concerneth Tin or Tin-works: And if any Person be not *re vera*, and without Fraud, a working and labouring Tinner, in or about some Tin-work, set on work within One Half Year next before his Suit, shall sue, prosecute, or implead, in any the said Courts, or before the Warden, Vice-warden, or Steward of the said Stannaries, any Person or Persons, that is or are not a Tinner or Tinners at the Time of such Suit commenced, then the Defendant and Defendants, in every such Case, shall have his and their Action at the Common Law, against such Person suing or prosecuting, wherein he shall recover ten Pounds, and his Damages and Costs of Suit: Provided that such Action be brought within two Years next after the Action or Suit brought in the said Stannary Courts, or before the said Warden, Vice-warden, or Steward.

In locis ubi operantur, how expounded.

None but Tinners to be sued; unless by working Tinners.

Persons sued by others shall have their Action.

Such Action to be brought within two Years.

Costs in Stannary Courts.

V. And be it declared and enacted, That in all Cases where the Plaintiff or Defendant, Plaintiffs or Defendants, are to have Costs by the Laws or Statutes of this Realm, there also the said Plaintiffs and Defendants shall have the like Costs in the Stannary Courts: And in regard that the said Charters were granted for the Ease and Advantage of the Tinners, and not for their Disadvantage or Oppression, and yet divers of them who, for special Reasons have desired to sue at the Common Law, have been restrained:

Tinners may sue Foreigners at the Common Law.

VI. Be it declared and enacted, That it shall be lawful to and for the said Tinners, if they think fit, to sue any Foreigners at the Common Law; the said Charter or any Usage to the contrary notwithstanding.

No. 18. 16 Charles I. c. 15. Abuses of poor Bailiffs in the Stannaries.

'VII. And whereas the Bailiffs of the said Stannary Courts 'are very numerous, and are Persons of small or no Credit; 'and yet upon their Return that any Person is become Surety 'for any other upon Arrest by Process out of the said Courts, 'such Person who sometimes knows nothing of the Matter, is 'by false Returns of the said Bailiffs, made liable to the Debt 'or Demand, which Bailiffs, by Reason of their Poverty, are 'often not responsible, and so the Party without Remedy:'

How Sureties may be sued.

VIII. Be it enacted, That no Person or Persons be charged or troubled as Surety by any Return of any Bailiff or Bailiffs of the said Stannaries, unless that the Person or Persons returned Surety or Sureties shall in the Presence of two Witnesses subscribe or sign a Note in Writing, that such Person or Persons is or are become Surety or Sureties; which Note shall mention the Names of the Plaintiffs and Defendants in the Suit, and the Sum or Damages in Demand, and the Nature of the Action, and shall be signed or subscribed by the said Witnesses, and returned and filed in the Court out of which such Process shall issue, and no Bailiff or Bailiffs of the said Stannaries shall be admitted as Witnesses to any such Note.

'IX. And whereas in the said Stannaries it is used, that 'if the Bailiffs return any Person arrested, that if such Person 'make default at the Day, he shall be condemned, and Execu'tion is suddenly awarded, when as often the Party was not 'arrested:'

No Defendant shall be condemned on Bailiff's Return, unless on a Note subscribed by the Party.

X. Be it further enacted, That no Defendant shall be condemned upon such Return for not appearing, unless also a Note under the Hand or Sign of the Party arrested, and subscribed by two such Witnesses as aforesaid, be returned into the said Court at or before the Day of Appearance; And the said Bailiff or Bailiffs shall take but four-pence for every such Note as aforesaid; and it is provided, that none shall be bailed upon Arrest there, till he give such Note.

Rescous.

XI. And in case any of the said Bailiff or Bailiffs shall return a Rescous against any Person or Persons, he or they shall be admitted to traverse the said Return; which Traverse, if it be found with him or them so traversing, then he or they shall be no further troubled or occasioned by Reason of such Return.

## No. 19.

**7 Anne, c. 9.—An Act for giving the Commissioners of Sewers for the City of *London* the same Powers as the Commissioners of Sewers for Counties have: and to oblige Collectors for the Sewers to account.**

## No. 20.

27 George II. c. 16.—An Act for making perpetual several Laws * * * * * * * * * * * * * * * * * * and that all Acts made for erecting Courts of Conscience shall be deemed publick Acts; and for other Purposes. P.

'II. AND whereas many Inconveniencies have arisen by reason several Acts for erecting Courts of Requests or 'Conscience in several Cities, Towns Corporate and other Pla-'ces have not been declared to be publick Acts;' Be it therefore enacted, That from and after the first Day of *January* one thousand seven hundred and fifty-five, all the Acts of Parliament for erecting Courts of Requests or Conscience for the Recovery of small Debts in Cities, Towns Corporate, and other Places in this Kingdom, shall be deemed, adjudged and taken to be publick Acts, and shall be judicially taken Notice of as such by all Judges, Justices and other Persons whatsoever, without specially pleading the same.

No. 20. 27 George II. c. 16.

All Acts for erecting Courts of Conscience deemed publick Acts.

## No. 21.

George II. c. 19.—An Act to empower Judges of Courts of Record in Cities and Towns Corporate, Liberties and Franchises, to set Fines on Persons who shall be summoned to serve upon Juries in such Courts, and shall neglect to attend.

'WHEREAS the City of *London*, and many other Cities and Towns Corporate, Liberties and Franchises, 'within this Kingdom, have by Royal Grants, or by Prescrip-'tion, certain Courts of Record holden within such Cities and 'Towns Corporate, Liberties and Franchises respectively, for 'the Trial of Actions and Suits arising within the Limits or Juris-'dictions of such Cities and Towns Corporate, Liberties or Fran-'chises respectively: And whereas great Inconveniences and 'Delays frequently happen to the Suitors in those Courts, by 'reason that Persons duly impanelled and summoned to serve 'upon Juries in such Courts, refuse or neglect to appear and 'serve upon the same: And whereas such Inconveniences and 'Delays principally arise from Want of Power in the Judge 'or Judges of such Courts, to compel Persons who are impa-'nelled and summoned to serve upon Juries, for the Trial of 'Causes depending in such Courts, to attend, or to fine them 'for their not attending:' Wherefore be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth Day of *June* one thousand seven hundred and fifty-six, every Person duly

No. 21. 29 George II. c. 19.

Persons summoned to serve on Juries, not attending, to forfeit not more than 40s. nor less than 20s.

No. 21. 29 George II. c. 19.

impancelled and summoned to serve upon any Jury for the Trial of any Cause to be tried in any Court of Record, holden or to be holden within the said City of *London*, or in any other City or Town Corporate, Liberties or Franchises, within the Kingdom of *England*, who shall not appear and serve on such Jury (after being openly called three Times, and on Proof being made on Oath of the Person so making Default having been duly summoned) shall forfeit and pay for every such his Default, such Fine, not exceeding the Sum of forty Shillings, nor less than the Sum of twenty Shillings, as the Judge or Judges of the respective Courts wherein any such Default shall be made, shall, from Time to Time, deem reasonable to impose or set, unless some just Cause for such Defaulter's Absence, shall be made appear by Oath or Affidavit, to the Satisfaction of the Judge or Judges of the said respective Courts wherein any such Default shall from Time to Time be made.

II. And be it further enacted by the Authority aforesaid, That if any Person on whom any Fine shall be imposed or set in pursuance of this Act, shall refuse to pay the same to the Person or Persons who shall be authorized by the Judge or Judges who shall impose or set any such Fine, to receive the same, it shall and may be lawful for the Judge or Judges who shall have imposed or set any such Fine, and he and they is and are hereby authorized and required, by Warrant under his Hand and Seal, or their Hands and Seals, to cause all and every such Fine which shall have been imposed or set by him or them as aforesaid, to be levied from Time to Time, by Distress and Sale of the Goods and Chattels of the Person or Persons on whom any such Fine shall have been so imposed or set as aforesaid; and the Overplus Money, if any, which shall remain after Payment of such Fine, and deducting the reasonable Charges of such Distress and Sale, shall be rendered to the Person or Persons whose Goods and Chattels shall have been so distrained and sold.

Fine to be paid to the proper Officer.

III. And be it further enacted by the Authority aforesaid, That every Fine which shall be imposed or set in pursuance of this Act, shall, when received or levied, be paid by the Person who shall receive or levy the same, to the proper Officer of the City or Town Corporate, Liberty or Franchise, in which the Court or Courts was or were holden, wherein such Fine so received or levied was imposed or set; to be applied to such Uses, as Issues set on Jurors, or other Fines set in Courts holden within such City or Town Corporate, Liberty or Franchise, are by Charter, Prescription or Usage applicable.

Limitation of Actions.

IV. And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be brought or commenced against any Person or Persons for any Thing done in pursuance of this Act, then and in every such Case, such Suit or Action shall be brought or commenced within six Calendar Months next after the Matter complained of shall have been committed, and not afterwards; and that the Defendant or Defendants in every such Action, shall and may plead the General Issue, and

General Issue.

give this Act and the Special Matter in Evidence, on any Trial to be had thereupon; and that the same was done in Pursuance and by the Authority hereof; and if upon the Trial of any such Action or Actions, the Jury shall find a Verdict for the Defendant or Defendants; or if the Plaintiff or Plaintiffs shall become nonsuit, or discontinue his or their Action or Actions; or if, upon Demurrer, Judgment shall be given against the Plaintiff or Plaintiffs, the Defendant or Defendants shall and may recover double Costs, and have the like Remedy for the same, as any Defendant or Defendants hath or have for Costs of Suit in other Cases by Law.

No. 21. 29 George II. c. 19.

Double Costs.

## No. 22.

19 George III. c. 70.—An Act for extending the Provisions of an Act, made in the twelfth Year of the Reign of King *George* the First, intituled "An Act to prevent frivolous and vexatious Arrests:" and for other Purposes.

No. 22. 19 George III. c. 70.

12 Geo. I. c. 29.

'WHEREAS in and by an Act of Parliament, made in the twelfth Year of the Reign of King *George* the First, intituled, "An Act to prevent frivolous and vexatious Arrests," it is enacted, That, from and after the twenty-fourth Day of *June*, one thousand seven hundred and twenty-six, no Person shall be held to special Bail upon any Process issuing out of any superior Court, where the Cause of Action shall not amount to the Sum of ten Pounds, or upwards, nor out of any inferior Court, where the Cause of Action shall not amount to the Sum of forty Shillings, or upwards: And whereas the Power of Arrest and Imprisonment, on mesne Process issuing out of such inferior Court, where the Cause of Action does not amount to ten Pounds, is found by Experience to be attended with much Oppression to great Numbers of his Majesty's Subjects; for Remedy whereof,' be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of *July*, one thousand seven hundred and seventy-nine, no Person shall be arrested or held to special Bail, upon any Process issuing out of any inferior Court, where the Cause of Action shall not amount to the Sum of ten Pounds, or upwards; but that the like Copies of Process shall be served, (for the Service of which Process a Sum not exceeding two Shillings and six Pence shall be allowed in Costs,) and the like Proceedings shall be had thereupon in such inferior Court, in all Cases where the Cause of Action shall not amount to the Sum of ten Pounds, or upwards, as are directed to be had, by the said recited Act, in such inferior Court in all Cases where the Cause of Action shall not amount to the Sum

No Person shall be arrested, or held to special Bail, upon any Process issuing out of an inferior Court, for less than

No 22.
19 George III
c. 70.

of forty Shillings; any Law or Usage to the contrary notwithstanding.

Proceedings in Causes of 10l or upwards, shall be the same as ordered in Causes of 40s. or upwards.

II. And be it further enacted, That, from and after the first Day of *July* one thousand seven hundred and seventy-nine, in all Cases in such inferior Court (having Jurisdiction to the Amount of ten Pounds, or upwards) where the Cause of Action shall amount to ten Pounds, or upwards, the like Affidavit shall be made and filed of such Cause of Action, and the like Proceedings shall be had thereupon, as are directed by the said recited Act to be had, where the Cause of Action amounts to the Sum of forty Shillings, or upwards, in such inferior Court.

So much of Acts as authorises Imprisonment for less than 10l. repealed.

'III. And whereas divers Acts of Parliament have passed 'for the Recovery Debts within certain Districts and Jurisdic-'tions, which may have authorised the Arrest and Imprison-'ment of Defendants, where the Cause of Action amounts to 'less than ten Pounds;' be it enacted, That so much of such Act or Acts of Parliament as gives such Power shall be, and the same is hereby repealed.

'IV. And, forasmuch as Persons served with Process 'issuing out of inferior Courts, where the Debt is under ten 'Pounds, may, in order to avoid Execution, remove their Per-'sons and Effects beyond the Limits of the Jurisdiction of such 'Courts;' be it enacted by the Authority aforesaid, That in all Cases where final Judgement shall be obtained, in any Action or Suit in any inferior Court of Record, it shall and may be lawful to and for any of his Majesty's Courts of Record at *Westminster*, upon Affidavit made and filed therein of such Judgment being obtained, and of diligent Search and Enquiry having been made after the Person or Persons of the Defendant or Defendants, or his, her, or their Effects, and of Execution having issued against the Person or Persons, or Effects, as the Case may be, of the Defendant or Defendants, and that the Person or Persons, or Effects, of the Defendant or Defendants, are not to be found within the Jurisdiction of such inferior Court, which Affidavit may be made before a Judge or Commissioner authorised to take Affidavits, and such superior Court, to cause the Record of the said Judgement to be removed into such superior Court, to issue Writs of Execution thereupon to the Sheriff of any County, City, Liberty or Place, against the Person or Persons, or Effects of the Defendant or Defendants, in the same Manner, as upon Judgements obtained in the said Courts at *Westminster*; and the Sheriff, upon every such Execution, shall, and he is hereby authorised to detain the Defendant or Defendants, until the Sum of twenty Shillings be paid to him, or to levy the same out of the Effects, according to the Nature of the Execution, for the extraordinary Costs of the Plaintiff or Plaintiffs in the inferior Court subsequent to the said Judgement, and of the Execution in the superior Court, over and above the Money for which such Execution shall be issued.

Record of such Judgement may be removed into the superior Court, and Writs of Execution issued to the Sheriff of any County, &c.

V. Provided always, and be it further enacted by the Authority aforesaid, That, from and after the first Day of *July* one thousand seven hundred and seventy-nine, no Execution shall be stayed or delayed upon or by any Writ of Error, or *Supersedeas* thereon to be sued, for the reversing of any Judgement given, or to be given, in any inferior Court of Record, where the Damages are under ten Pounds, unless such Person or Persons, in whose Name or Names such Writ of Error shall be brought, with two sufficient Sureties, such as the Court (wherein such Judgement is or shall be given) shall allow of, shall first, before such Stay made or *Supersedeas* to be awarded, be bound unto the Party for whom any such Judgement is or shall be given, by Recognizance to be acknowledged in the same Court, in double the Sum adjudged to be recovered by the said former Judgement, to prosecute the said Writ of Error with Effect, and also to satisfy and pay (if the said Judgement be affirmed, or the said Writ of Error be nonpros'd) all and singular the Debt, Damages, and Costs, adjudged or to be adjudged, and all Costs and Damages to be awarded for the same delaying of Execution.

No 22. 19 George III. c. 70.

Upon what Conditions Execution shall be stayed upon any Writ of Error, &c.

VI. Provided also, and be it further enacted, That no Cause, where the Cause of Action shall not amount to the Sum of ten Pounds, or upwards, shall be removed or removable into any superior Court, by any Writ of *Habeas Corpus*, or otherwise, unless the Defendant, who shall be desirous of removing such Cause shall enter into the like Recognizance for Payment of the Debt and Costs, in case Judgement shall pass against him.

No Cause under 10l. to be removed into a Superior Court, unless, &c.

## No. 23.

26 George III. c. 38.—An Act for regulating the Time of the Imprisonment of Debtors imprisoned by Process from Courts instituted for the Recovery of small Debts; for abolishing the Claim of Fees of Gaolers, and others, in the Cases of such Imprisonment; and for ascertaining the Qualifications of the Commissioners.

'WHEREAS by several Acts of Parliament now in force, and made to establish or regulate Courts for the Recovery of small Debts in several Cities, Towns, Districts, and Places within this Kingdom, there is no uniform Time limited for the Duration of the Imprisonment of the Defendant or Debtor, against whom an Execution, Process of Contempt, or Precept in the Nature of an Execution, is issued for Non-payment of such Debts and Costs, Sum or Sums of Money, as by the Order or Orders of such Courts such Debtor or Defendant is ordered or directed to pay, but such Debtors or Defendants are by such Acts of Parliament to be committed to Prison, there to remain for an indefinite

No. 23. 26 George III. c. 38.

No. 23. 26 George III. c. 38.

'Length of Time, until he, she or they shall perform the Order 'of the Court or Commissioners in that Behalf; so that it frequently happens that a poor Person, who is not of Ability to 'pay a Debt of or under forty Shillings, is imprisoned for 'many Months, and sometimes for Years, without a Possibility 'of being discharged: And whereas it often happens that 'poor Persons, who are committed to Prison by Virtue of and 'in Pursuance of the said Acts of Parliament for a trifling 'Debt are kept in Custody after they have been enabled to pay 'and discharge such Debt, for Gaol Fees: And whereas an 'Act was made in the last Session of Parliament, intituled, '"An Act for reducing the Time for the Imprisonment of 'Debtors committed to Prison, upon Prosecutions in Courts of 'Conscience, in *London*, *Middlesex*, and the Borough of '*Southwark*, to the same Periods in each Court; and for abolishing Fees paid by those Debtors to Gaolers, or others, on 'account of such Imprisonment," the Purposes of which Act 'have been found to be beneficial; and it is expedient that the 'like Provisions should be extended to all other Courts instituted for the Recovery of small Debts:' Therefore be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of *September* one thousand seven hundred and eighty-six, no Person whosoever, being a Debtor or Defendant, and who has been or shall be committed to any Gaol or Prison by Order of any Court, or Commissioners authorised by any Act or Acts of Parliament for constituting or regulating any Court or Courts for the Recovery of small Debts, where the Debt does not exceed twenty Shillings, shall be kept or continued in Custody, on any Pretence whatsoever, more than twenty Days from the Commencement of this Act, or from the Time of his, her, or their Commitment to Prison; and where the original Debt does not amount to or exceed the Sum of forty Shillings, more than forty Days from the Commencement of this Act, or from the Time of his, her, or their Commitment as aforesaid; and all Gaolers, Keepers, or Turnkeys, are hereby directed and required to discharge such Persons accordingly.

25 Geo. 3, c. 45.

Limitation of the Time of Imprisonment of Debtors committed by Courts of Conscience.

'II. And, in order the more effectually to prevent Persons summoned for Debts to the said Courts from the fraudulent Concealment of their Money or Goods;' be it enacted by the Authority aforesaid, That in case, upon the Summons of any Person for Debt before the said Court or Commissioners, Information of any such Practice shall be given, such Court or Commissioners shall have Power to hear Evidence as to such fraudulent Concealment; and in case it shall be proved to their Satisfaction, upon the Oaths of two or more credible Witnesses (which Oath the said Court or Commissioners are hereby impowered to administer, and which Oath, if falsely taken, shall subject the Party or Parties so taking it to all the Pains and

Debtors found guilty of a fraudulent Concealment of their Effects, may be imprisoned for a longer Term.

Penalties of wilful and corrupt Perjury), that any such Debtor has Money or Goods which he has wilfully and fraudulently concealed; in that Case, the Court or Commissioners shall have Power to enlarge the aforesaid Times of Imprisonment for Debts under twenty Shillings, to any Time not exceeding thirty Days, and for Debts under forty Shillings, to any Time not exceeding sixty Days; which said Circumstance or Ground of further Detention shall be specified in the said Commitment; and the Depositions of the Witnesses shall be entered in a Book to be kept for that Purpose by the Clerk to each respective Court or Commissioners.

No. 23. 26 George III, c. 38.

III. And be it further enacted by the Authority aforesaid, That at the Expiration of the said respective Times of Imprisonment as aforesaid, every such Person or Persons shall immediately be discharged and set at Liberty, without paying any Sum or Sums of Money, Fee or Fees, or other Reward or Gratuity whatsoever, to the Gaoler, Keeper, or Turnkey of such Gaol or Prison, or others, by way of Gaol Fees, or Discharge Fees, or otherwise, on any Pretence whatsoever; and every Gaoler, Keeper, or Turnkey of any such Gaol or Prison, or others, demanding, taking, or receiving any Fee or Fees, Sum or Sums of Money whatsoever, upon the Discharge of any such Person or Persons, committed or to be committed to such Custody as aforesaid, or keeping or detaining any such Person or Persons Prisoner or Prisoners, after the respective Times limited by this Act, shall, for every such Offence, forfeit and pay the Sum of five Pounds.

Debtors not liable to pay Gaol Fees.

Penalty on Gaolers demanding such Fees.

IV. And be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for any two Justices of the Peace where the Offence shall be committed, to hear and determine any Offence against this Act, which said two Justices of the Peace are hereby authorised and required, upon any Information exhibited or Complaint made before them of such Offence having been committed, to summon the Party accused, and also the Witnesses on either Side, and to examine into the Matter of Fact; and upon due Proof made thereof, by the Oath of one or more credible Witness or Witnesses, or by the voluntary Confession of the Party, to give Judgement or Sentence for the Penalty or Forfeiture, as in and by this Act is directed, and to award and issue out their Warrant under their Hands and Seals, for levying the said Penalty of five Pounds so adjudged on the Goods of the Offender, and to cause Sale to be made thereof, in case they shall not be redeemed in four Days, rendering to the Party the Overplus (if any); and where the Goods of such Offender cannot be found sufficient to answer the Penalty, to commit such Offender to Prison, there to remain for the Space of two Months, unless such Penalty shall be sooner paid and satisfied.

Two Justices may determine Offences against this Act.

V. And be it further enacted, That all Forfeitures and Penalties inflicted by this Act (the necessary Charges for the Recovery thereof being first deducted) shall be divided and distributed in Manner following; that is to say, one Moiety

Penalties and Forfeitures how to be applied.

No. 23. 26 George III. c. 38.

thereof to be paid to the Churchwardens or Overseers of the Poor, for the Support and Maintenance of the Poor of the Parish in which the Offence shall be committed; and the other Moiety to the Person or Persons who shall inform and sue for the same.

Informations to be exhibited within a limited Time.

VI. Provided always, and be it enacted, That no Person or Persons shall be liable to be convicted before any Justices of the Peace, for any Offence committed against this Act, unless Complaint or Information shall be made or exhibited against such Person or Persons within two Calendar Months after such Offence committed.

Process not to issue against the Body and Goods of the same Person.

VII. Provided also, and be it enacted, That it shall not be lawful for any such Court or Commissioners to issue any Process against the Body or Bodies of any Person or Persons, where the Party intitled to the Benefit of any Order, Judgement or Decree, shall at the same Time have obtained any Warrant or Process against the Goods and Chattels of the same Person or Persons.

Qualification of Commissioners.

VIII. And be it further enacted, That, from and after the twenty-fourth Day of *June* one thousand seven hundred and eighty-six, no Person shall be capable of acting as a Commissioner in the Execution of any of the Acts for constituting such Courts, unless such Person shall be a Householder within the County, District, City, Liberty, or Place for which he shall act, and shall be possessed of a real Estate of the annual Value of twenty Pounds, or of a personal Estate of the Value of five hundred Pounds: And if any Person not being so qualified, shall presume to act as a Commissioner in the Execution of any of the Acts for constituting such Courts, every Person so acting shall forfeit and pay the Sum of twenty Pounds to any Person or Persons who shall sue for the same, to be recovered, with full Costs of Suit, by Action of Debt or on the Case, wherein no Essoin, Protection, Privilege, or Wager of Law, or more than one Imparlance, shall be allowed; and the Person so prosecuted shall prove that he is qualified as aforesaid, or otherwise shall pay the said Penalty, upon Proof being given of his having acted as a Commissioner in the Execution of any the Acts constituting such Courts: Provided always, That such Action or Suit shall be commenced within six Calendar Months next after the Offence committed, and shall be laid or brought in the County, City, or Place, where the Offence shall be committed, and not elsewhere.

Penalty on acting not being qualified.

# PART IV. CLASS XVII.

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## STATUTES RELATING TO PERSONAL LIBERTY.

### No. 1.

### 9 Henry III. c. 29. - None shall be condemned without Trial. Justice shall not be sold or deferred.

NULLUS liber homo capiatur vel imprisonetur aut disseisiatur de libero tenemento suo vel libertatibus vel liberis consuetudinibus suis aut utlagetur aut exulet aut aliquo modo destruatur nec super eum ibimus nec super eum mittemus nisi per legale judicium parium suorum vel per legem terre. Nulli vendemus nulli negabimus aut differemus rectum vel justiciam.

'NO Freeman shall be 'taken, or imprisoned, or 'be disseised of his Freehold, 'or Liberties, or free Customs, 'or be outlawed or exiled, or 'any otherwise destroyed; *nor* '*will we pass upon him, nor* '*condemn him*,* but by lawful 'Judgment of his Peers, or 'by Law of the Land. We 'will sell to no Man, we will 'not deny, or defer, to any 'Man, either Justice or Right.'

No. 1. 9 Henry III. c. 29.

* The Words above, marked in Italicks, do by no means express the Sense of the Original. The two Verbs *Ibimus* and *Mittemus* evidently stand in Contradistinction to each other, and are indeed much easier expounded than translated; therefore, we cannot do better than recur to Lord Coke's Exposition, which is as follows: —— 'No Man shall be condemned at the King's 'Suit, either before the King in his Bench, where the Pleas are *Coram Rege*, '(and so are the Words *nec super eum ibimus*, to be understood) nor before 'any other Commissioner or Judge whatever (and so are the Words *nec super* '*eum mittemus*, to be understood.' —*Note to Ruffhead's Edition of the Statutes.*

## No. 2.

3 Charles I. c. 1.—The Petition exhibited to his Majesty by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King's Majesty's Royal Answer thereunto in full Parliament.

*To the King's most Excellent Majesty.*

No. 2. 3 Charles I. c. 1. The Petition of Right.

34 Ed. 1. st. 4. c. 1.

25 Ed. 3, st. 1, c. 6.

1 Ed. 3, st. 2, c. 6.

11 R. 2, c. 9.

1 R. 3, c. 2.

'HUMBLY shew unto our Sovereign Lord the King, the 'Lords Spiritual and Temporal, and Commons, in Par'liament assembled, That whereas it is declared and enacted 'by a Statute made in the Time of the Reign of King *Edward* 'the First, commonly called *Statutum de Tallagio non conce'dendo*, That no Tallage or Aid shall be laid or levied by the 'King or his Heirs in this Realm, without the good Will and 'Assent of the Archbishops, Bishops, Earls, Barons, Knights, 'Burgesses, and other the Freemen of the Commonalty of 'this Realm; and by Authority of Parliament holden in the 'Five and twentieth Year of the Reign of King *Edward* the 'Third, it is declared and enacted, That from thenceforth no 'Person should be compelled to make any Loans to the King 'against his Will, because such Loans were against Reason 'and the Franchise of the Land; and by other Laws of this 'Realm it is provided, That none should be charged by any 'Charge or Imposition called a Benevolence, nor by such like 'Charge: By which the Statutes before mentioned, and other 'the good Laws and Statutes of this Realm, your Subjects have 'inherited this Freedom, That they should not be compelled to 'contribute to any Tax, Tallage, Aid, or other like Charge, 'not set by common Consent in Parliament.

'II. Yet nevertheless, of late divers Commissions 'directed to sundry Commissioners in several Counties with 'Instructions, have issued; by means whereof your People 'have been in divers Places assembled, and required to lend 'certain Sums of Money unto your Majesty, and many of 'them, upon their Refusal so to do, have had an Oath adminis'tered unto them not warrantable by the Law or Statutes 'of this Realm, and have been constrained to become bound 'to make Appearance and give Attendance before your Privy 'Council and in other Places, and others of them have been 'therefore imprisoned, confined, and sundry other Ways 'molested and disquieted; and divers other Charges have been 'laid and levied upon your People in several Counties by Lord 'Lieutenants, Deputy Lieutenants, Commissioners for Musters, 'Justices of Peace and others, by Command or Direction from 'your Majesty, or your Privy Council, against the Laws and 'Free Customs of the Realm.

9 H. 3, st. 1, c. 29.

'III. And where also by the Statute called *The Great 'Charter of the Liberties of England*, it is declared and enact'ed, That no Freeman may be taken or imprisoned, or be

'disseised of his Freehold or Liberties, or his Free Customs, 'or be outlawed or exiled, or in any Manner destroyed, but 'by the lawful Judgment of his Peers, or by the Law of the 'Land. No. 2. 3 Charles I. c. 1.

'IV. And in the Eight and twentieth Year of the Reign of King *Edward* the Third, it was declared and enacted by 'Authority of Parliament, That no Man, of what Estate or 'Condition that he be, should be put out of his Land or 'Tenements, nor taken, nor imprisoned, nor disherited, nor 'put to Death, without being brought to answer by due Pro-'cess of Law: 28 Ed. 3. c. 3.

'V. Nevertheless against the Tenor of the said Statutes, 'and other the good Laws and Statutes of your Realm to that 'End provided, divers of your Subjects have of late been 'imprisoned without any Cause shewed; and when for their 'Deliverance they were brought before your Justices by your 'Majesty's Writs of *Habeas Corpus*, there to undergo and re-'ceive as the Court should order, and their Keepers command-'ed to certify the Causes of their Detainer, no Cause was 'certified, but that they were detained by your Majesty's 'special Command, signified by the Lords of your Privy 'Council, and yet were returned back to several Prisons, 'without being charged with any Thing to which they might 'make Answer according to the Law. 37 Ed. 3. c. 18. 38 Ed. 3. st. 2, c. 9. 42 Ed. 3. c. 3. 17 R. 2. c. 6.

'VI. And whereas of late great Companies of Soldiers 'and Mariners have been dispersed into divers Counties of 'the Realm, and the Inhabitants against their Wills have been 'compelled to receive them into their Houses, and there to 'suffer them to sojourn, against the Laws and Customs of this 'Realm, and to the great Grievance and Vexation of the 'People:

'VII. And whereas also by Authority of Parliament, in 'the five and twentieth Year of the Reign of King *Edward* 'the Third, it is declared and enacted, That no Man should be 'forejudged of Life or Limb against the Form of the *Great* '*Charter* and the Law of the Land; and by the said *Great* '*Charter* and other the Laws and Statutes of this your Realm, 'no Man ought to be adjudged to Death but by the Laws estab-'lished in this your Realm, either by the Customs of the same 'Realm, or by Acts of Parliament: And whereas no Offender 'of what Kind soever is exempted from the Proceedings to be 'used, and Punishments to be inflicted by the Laws and Sta-'tutes of this your Realm: Nevertheless of late Time divers 'Commissions under your Majesty's Great Seal have issued 'forth, by which certain Persons have been assigned and 'appointed Commissioners, with Power and Authority to pro-'ceed within the Land, according to the Justice of Martial 'Law, against such Soldiers or Mariners, or other dissolute 'Persons joining with them, as should commit any Murther, 'Robbery, Felony, Mutiny or other Outrage or Misdemeanor 'whatsoever, and by such summary Course and Order as is 'agreeable to Martial Law, and as is used in Armies in Time 25 Ed. 3. st. 5, c. 4. 9 H. 3. st. 1, c. 29. 25 Ed. 3. st. 5, c. 4. 28 Ed. 3. c. 3.

No. 2.
3 Charles I. c. 1.

'of War, to proceed to the Trial and Condemnation of such 'Offenders, and them to cause to be executed and put to Death 'according to the Law Martial.

'VIII. By Pretext whereof some of your Majesty's Sub-'jects have been by some of the said Commissioners put to 'Death, when and where, if by the Laws and Statutes of the 'Land they had deserved Death, by the same Laws and 'Statutes also they might, and by no other ought to have been 'judged and executed:

'IX. And also sundry grievous Offenders, by Colour 'thereof claiming an Exemption, have escaped the Punish-'ments due to them by the Laws and Statutes of this your 'Realm, by Reason that divers of your Officers and Ministers 'of Justice have unjustly refused or forborn to proceed against 'such Offenders according to the same Laws and Statutes, 'that upon Pretence the said Offenders were punishable only by 'Martial Law, and by Authority of such Commissions as afore-'said: Which Commissions, and all other of like Nature, are 'wholly and directly contrary to the said Laws and Statutes of 'this your Realm:

The Petition. 25 Ed. 1, st. 1, c. 6.

X. They do therefore humbly pray your Most Excellent Majesty, That no Man hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or such like Charge, without common Consent by Act of Parliament; and that none be called to make Answer, or take such Oath, or to give Attendance, or be confined, or otherwise molested or disquieted concerning the same, or for Refusal thereof; and that no Freeman, in any such Manner as is before-mentioned, be imprisoned or detained; and that your Majesty would be pleased to remove the said Soldiers and Mariners, and that your People may not be so burthened in Time to come; and that the aforesaid Commissions, for proceeding by Martial Law, may be revoked and annulled; and that hereafter no Commissions of like Nature may issue forth to any Person or Persons whatsoever to be executed as aforesaid, lest by Colour of them any of your Majesty's Subjects be destroyed, or put to Death contrary to the Laws and Franchise of the Land.

XI. All which they most humbly pray of your Most Excellent Majesty as their Rights and Liberties, according to the Laws and Statutes of this Realm; and that your Majesty would also vouchsafe to declare, That the Awards, Doings, and Proceedings, to the Prejudice of your People in any of the Premises shall not be drawn hereafter into Consequence or Example; and that your Majesty would be also graciously pleased, for the further Comfort and Safety of your People, to declare your Royal Will and Pleasure, That in the Things aforesaid all your Officers and Ministers shall serve you according to the Laws and Statutes of this Realm, as they tender the Honour of your Majesty, and the Prosperity of this Kingdom. *Qua quidem Petitione lecta &c. plenius intellecta per dictum Dominum Regem taliter est responsum in pleno Parliamento,* viz. Soit droit fait comme est desiré.

## No. 3.

## 16 Charles I. c. 10.—An Act for the Regulating of the Privy Council, and for taking away the Court commonly called the Star-Chamber.

No. 3.
16 Charles I. c. 10.

Recital of Magna Charta and several Statutes.

9 H. 3, st. 1, c. 29.
5 Ed. 3. c. 9.
3 H. 7. c. 1.

25 Ed. 3, st. 5, c. 4.

28 Ed. 3, c. 3.

42 Ed. 3, c. 3.

36 Ed. 3, c. 15.

3 H. 7. c. 1.

'WHEREAS by the Great Charter many Times confirmed 'in Parliament, it is enacted, That no Freeman shall 'be taken or imprisoned, or disseised of his Freehold or Liber- 'ties, or Free Customs, or be outlawed or exiled or otherwise 'destroyed, and that the King will not pass upon him, or con- 'demn him, but by lawful Judgment of his Peers, or by the 'Law of the Land: And by another Statute made in the fifth 'Year of the Reign of King *Edward* the Third, it is enacted, 'That no Man shall be attached by any Accusation, nor fore- 'judged of Life or Limb, nor his Lands, Tenements, Goods 'nor Chattels seized into the King's Hands, against the Form 'of the Great Charter, and the Law of the Land: And by 'another Statute made in the five and twentieth Year of the 'Reign of the same King *Edward* the Third, It is accorded, 'assented and established, That none shall be taken by Petition 'or Suggestion made to the King, or to his Council, unless it 'be by Indictment or Presentment of good and lawful People 'of the same Neighbourhood where such Deeds be done, in 'due Manner, or by Process made by Writ Original at the 'Common Law, and that none be put out of his Franchise or 'Freehold, unless he be duly brought in to answer, and fore- 'judged of the same by the Course of the Law, and if any 'Thing be done against the same, it shall be redressed and 'holden for none; And by another Statute made in the eight 'and twentieth Year of the Reign of the same King *Edward* 'the Third, it is amongst other Things enacted, That no Man 'of what Estate or Condition soever he be, shall be put out of 'his Lands or Tenements, nor taken, nor imprisoned, nor 'disinherited, without being brought in to answer by due Pro- 'cess of Law: And by another Statute made in the two and 'fortieth Year of the Reign of the said King *Edward* the Third, 'It is enacted, That no Man be put to answer, without Pre- 'sentment before Justices, or Matter of Record, or by due 'Process and Writ Original, according to the old Law of the 'Land, and if any Thing be done to the contrary, it shall be 'void in Law, and holden for Error: And by another Statute 'made in the six and thirtieth Year of the same King *Edward* 'the Third, It is amongst other Things enacted, That all 'Pleas which shall be pleaded in any Courts before any the 'King's Justices, or in his other Places, or before any of his 'other Ministers, or in the Courts and Places of any other Lords within the Realm, shall be entered and enrolled in '*Latin*: And whereas by the Statute made in the third Year of 'King *Henry* the Seventh Power is given to the Chancellor, 'the Lord Treasurer of *England* for the Time being, and the 'Keeper of the King's Privy Seal, or two of them, calling

No. 3. 16 Charles I. c. 10.

'unto them a Bishop and a Temporal Lord of the King's most 'Honourable Council, and the two Chief Justices of the 'King's Bench and Common Pleas for the Time being, or other 'two Justices in their Absence, to proceed as in that Act is ex- 'pressed, for the Punishment of some particular Offences 'therein mentioned: And by the Statute made in the one and 'twentieth Year of King *Henry* the Eighth, the President of 'the Council is associated to join with the Lord Chancellor and 'other Judges in the said Statute of the Third of *Henry* the 'Seventh mentioned; but the said Judges have not kept them- 'selves to the Points limited by the said Statute, but have under- 'taken to punish where no Law doth warrant, and to make 'Decrees for Things having no such Authority, and to inflict 'heavier Punishments than by any Law is warranted.

21 H. 8, c. 20.

All Matters examinable in the Star Chamber, may be examinable and redressed by the Common Law.

'II. And forasmuch as all Matters examinable or deter- 'minable before the said Judges, or in the Court commonly 'called the Star-Chamber, may have their proper Remedy and 'Redress, and their due Punishment and Correction, by the 'Common Law of the Land, and in the ordinary Course of 'Justice elsewhere; and forasmuch as the Reasons and Mo- 'tives inducing the Erection and Continuance of that Court 'do now cease; and the Proceedings, Censures and Decrees 'of that Court, have by Experience been found to be an 'intolerable Burthen to the Subjects, and the Means to intro- 'duce an arbitrary Power and Government; and forasmuch as 'the Council-Table hath of late Times assumed unto itself a 'Power to intermeddle in Civil Causes and Matters only of 'private Interest between Party and Party, and have adven- 'tured to determine of the Estates and Liberties of the Subject, 'contrary to the Law of the Land and the Rights and Privi- 'leges of the Subject, by which great and manifold Mischiefs 'and Inconveniences have arisen and happened, and much 'Incertainty by means of such Proceedings hath been concei- 'ved concerning Men's Rights and Estates;' for settling whereof, and preventing the like in Time to come,

Court of Star Chamber, and all its Powers, dissolved.

III. Be it ordained and enacted by the Authority of this present Parliament, That the said Court commonly called the Star-Chamber, and all Jurisdiction, Power and Authority belonging unto, or exercised in the same Court, or by any the Judges, Officers or Ministers thereof, be from the first Day of *August* in the Year of our Lord God one thousand six hundred forty and one, clearly and absolutely dissolved, taken away and determined; and that from the said first Day of *August* neither the Lord Chancellor, or Keeper of the Great Seal of *England*, the Lord Treasurer of *England*, the Keeper of the King's Privy Seal, or President of the Council, nor any Bishop, Temporal Lord, Privy Counsellor or Judge, or Justice whatsoever, shall have any Power or Authority to hear, examine or determine any Matter or Thing whatsoever, in the said Court commonly called the Star-Chamber, or to make, pronounce or deliver any Judgement, Sentence, Order or Decree, or to do any judicial or ministerial Act in the said Court: And

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that all and every Act and Acts of Parliament, and all and every Article, Clause and Sentence in them, and every of them, by which any Jurisdiction, Power or Authority is given, limited or appointed unto the said Court commonly called the Star-Chamber, or unto all or any the Judges, Officers or Ministers thereof, or for any Proceedings to be had or made in the said Court, or for any Matter or Thing to be drawn into Question, examined, or determined there, shall for so much as concerneth the said Court of Star-chamber, and the Power and Authority thereby given unto it, be from the said first Day of *August* repealed, and absolutely revoked and made void.

Like Jurisdiction in several other Courts repealed and taken away.

IV. And be it likewise enacted, That the like Jurisdiction now used and exercised in the Court before the President and Council in the Marches of *Wales*; and also in the Court before the President and Council established in the Northern Parts; and also in the Court commonly called the Court of the Duchy of *Lancaster*, held before the Chancellor and Council of that Court; and also in the Court of Exchequer of the County Palatine of *Chester* held before the Chamberlain and Council of that Court; the like Jurisdiction being exercised there, shall from the said first Day of *August* One thousand six hundred forty and one, be also repealed and absolutely revoked and made void; any Law, Prescription, Custom or Usage, or the said Statute made in the Third Year of King *Henry* the Seventh, or the Statute made in the One and twentieth of *Henry* the Eighth, or any Act or Acts of Parliament heretofore had or made, to the contrary thereof in any wise notwithstanding: And that from henceforth no Court, Council or Place of Judicature, shall be erected, ordained, constituted, or appointed within this Realm of *England*, or Dominion of *Wales*, which shall have, use or exercise the same or the like Jurisdiction as is or hath been used, practised, or exercised in the said Court of Star-chamber.

3 H. 7, c. 1. 21 H. 8, c. 20.

No Court or Council to have the like Jurisdiction.

The King or his Privy Council shall not have Jurisdiction over any Man's Estate.

V. Be it likewise declared and enacted by Authority of this present Parliament, That neither his Majesty, nor his Privy Council, have or ought to have any Jurisdiction, Power or Authority, by *English* Bill, Petition, Articles, Libel, or any other arbitrary Way whatsoever, to examine or draw into question, determine or dispose of the Lands, Tenements, Hereditaments, Goods or Chattels of any the Subjects of this Kingdom; but that the same ought to be tried and determined in the ordinary Courts of Justice, and by the ordinary Course of the Law.

Penalties upon great Officers and others for the first Offence.

VI. And be it further provided and enacted, That if any Lord Chancellor, or Keeper of the Great Seal of *England*, Lord Treasurer, Keeper of the King's Privy Seal, President of the Council, Bishop, Temporal Lord, Privy Counsellor, Judge or Justice whatsoever, shall offend, or do any Thing contrary to the Purport, true Intent and Meaning of this Law, then he or they shall for such Offence forfeit the Sum of five hundred Pounds of lawful Money of *England* unto any Party grieved, his Executors or Administrators, who shall really prosecute for the same, and first obtain Judgment thereupon, to be recorded

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in any Court of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information, wherein no Essoin, Protection, Wager of Law, Aid Prayer, Privilege, Injunction, or Order of Restraint, shall be in any wise prayed, granted or allowed, nor any more than one Imparlance: And if any Person against whom any such Judgment or Recovery shall be had as aforesaid, shall after such Judgment or Recovery offend again in the same, then he or they for such Offence shall forfeit the Sum of one thousand Pounds of lawful Money of *England* unto any Party aggrieved, his Executors or Administrators, who shall really prosecute for the same, and first obtain Judgement thereupon, to be recorded, in any Court of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information, in which no Essoin, Protection, Wager of Law, Aid Prayer, Privilege, Injunction, or Order of Restraint, shall be in anywise prayed, granted, or allowed, nor any more than one Imparlance: And if any Person against whom any such second Judgment or Recovery shall be had as aforesaid, shall, after such Judgment or Recovery, offend again in the same Kind, and shall be thereof duly convicted by Indictment, Information, or any other lawful Way or Means, that such Person so convicted shall be from thenceforth disabled, and become, by virtue of this Act, incapable, *ipso facto*, to bear his and their said Office and Offices respectively; and shall be likewise disabled to make any Gift, Grant, Conveyance, or other Disposition of any of his Lands, Tenements, Hereditaments, Goods, or Chattels, or to take any Benefit of any Gift, Conveyance, or Legacy to his own Use.

Second Offence:

Third Offence.

Treble Damages to the Party grieved.

VII. And every Person so offending shall likewise forfeit and lose unto the Party grieved, by any Thing done contrary to the true Intent and Meaning of this Law, his treble Damages which he shall sustain and be put unto by Means or Occasion of any such Act or Thing done, the same to be recovered in any of his Majesty's Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information, wherein no Essoin, Protection, Wager of Law, Aid Prayer, Privilege, Injunction, or Order of Restraint, shall be in anywise prayed, granted or allowed, nor any more than one Imparlance.

Every Person committed contrary to this Act shall have an Habeas Corpus.

VIII. And be it also provided and enacted, That if any Person shall hereafter be committed, restrained of his Liberty, or suffer Imprisonment, by the Order or Decree of any such Court of Star Chamber, or other Court aforesaid, now or at any Time hereafter, having, or pretending to have, the same or like Jurisdiction, Power, or Authority, to commit or imprison as aforesaid, or by the command or Warrant of the King's Majesty, his Heirs or Successors, in their own Person, or by the Command or Warrant of the Council-board, or of any of the Lords or others of his Majesty's Privy Council; that in every Case every Person so committed, restrained of his Liberty, or suffering Imprisonment, upon Demand or Motion made by his Council, or other employed by him for that Purpose, unto the Judges of the Court of King's Bench or Common Pleas, in open Court, shall, without Delay, upon any Pretence whatsoever, for

the ordinary Fees usually paid for the same, have forthwith granted unto him a Writ of *Habeas Corpus*, to be directed generally unto all and every Sheriffs, Gaoler, Minister, Officer, or other Persons in whose Custody the Party committed or restrained shall be, and the Sheriffs, Gaoler, Minister, Officer, or other Person in whose Custody the Party so committed or restrained shall be, shall, at the Return of the said Writ, and according to the Command thereof, upon due and convenient Notice thereof given unto him, at the Charge of the Party who requireth or procureth such Writ, and upon Security by his own Bond given, to pay the Charge of carrying back the Prisoner, if he shall be remanded by the Court to which he shall be brought, as in like Cases hath been used, such Charges of bringing up and carrying back the Prisoner to be always ordered by the Court, if any Difference shall arise thereabout, bring, or cause to be brought, the Body of the said Party so committed or restrained unto and before the Judges or Justices of the said Court from whence the said Writ shall issue, in open Court, and shall then likewise certify the true Cause of such his Detainer or Imprisonment, and thereupon the Court, within three Court Days after such Return made and delivered in open Court, shall proceed to examine and determine whether the Cause of such Commitment appearing upon the said Return be just and legal, or not, and shall thereupon do what to Justice shall appertain, either by delivering, bailing or remanding the Prisoner: And if any Thing shall be otherwise wilfully done, or omitted to be done, by any Judge Justice, Officer, or other Person aforementioned, contrary to the Direction and true Meaning hereof, that then such Person so offending shall forfeit to the Party grieved his Treble Damages, to be recovered by such Means, and in such Manner as is formerly in this Act limited and appointed for the like Penalty to be sued for and recovered.

No. 3. 16 Charles I. c. 10.

Treble Damages in Default.

To what Courts this Act shall extend.

IX. Provided always, and be it enacted, That this Act, and the several Clauses therein contained, shall be taken and expounded to extend only to the Court of Star Chamber, and to the said Courts holden before the President and Council in the Marches of *Wales*, and before the President and Council in the Northern Parts, and also to the Court commonly called the Court of the Dutchy of *Lancaster*, holden before the Chancellor and Council of that Court, and also in the Court of Exchequer of the County Palatine of *Chester*, held before the Chamberlain and Council of that Court, and to all Courts of like Jurisdiction to be hereafter erected, ordained, constituted, or appointed, as aforesaid; and to the Warrants and Directions of the Council-board, and to the Commitments, Restraints, and Imprisonments, of any Person or Persons made, commanded, or awarded, by the King's Majesty, His Heirs or Successors, in their own Person, or by the Lords and others of the Privy Council, and every One of them.

Offenders against this Act shall be im-

X. And lastly provided, and be it enacted, That no Person or Persons shall be sued, impleaded, molested, or trou-

No. 3. 16 Charles I. c. 10.

pleaded within two Years after any Offence.

bled, for any Offence against this present Act, unless the Party supposed to have so offended shall be sued or impleaded for the same within Two Years at the most after such Time wherein the said Offence shall be committed.

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## No. 4.

31 Charles II. c. 2.—An Act for the better securing the Liberty of the Subject, and for Prevention of Imprisonment beyond the Seas.*

No. 4. 31 Charles II. c. 2.

'WHEREAS great Delays have been used by Sheriffs, 'Gaolers and other Officers, to whose Custody any 'of the King's Subjects have been committed for criminal or 'supposed criminal Matters, in making Returns of Writs 'of *Habeas Corpus* to them directed, by standing out an *Alias* 'and *Pluries Habeas Corpus*, and sometimes more, and by 'other Shifts to avoid their yielding Obedience to such Writs, 'contrary to their Duty and the known Laws of the Land,

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* Of the Passing of this important Act Bishop Burnet relates the following extraordinary Anecdote; vol. 1, p. 485:—"It was carried by an odd Artifice in the House of Lords. Lord Grey and Lord Norris were named to be the Tellers: Lord Norris being a Man subject to the Vapours, was not at all Times attentive to what he was doing; so a very fat Lord coming in, Lord Grey counted him for ten, as a Jest at first; but seeing Lord Norris had not observed it, he went on with this Mis-reckoning of ten: so it was reported to the House, and declared that they who were for the Bill were the Majority; tho', indeed, it went on the other Side: and by this Means the Bill past."

Whatever Doubt may be entertained of the Truth of this Anecdote, it may at least be taken for granted, that such a Story could not have become current, unless there had been in fact a strong Opposition to the Measure. For the Reasons of passing the Act, see 3 Bl. Com. 135.

The Act has been at various Times suspended, with respect to the Power of Imprisonment of the Crown, upon Occasions of public Alarm; such Suspensions usually being for a very short Period. The general Title given to such temporary Acts has been, "An Act to empower his Majesty to secure and detain such Persons as his Majesty shall suspect are conspiring against his Person and Government." The following are Acts of this Description: 1 W. and M. s. 1, ch. 7, 19; 7 and 8 W. III. c. 11; 6 Ann, c. 15; 7 Ann, c. 9; 1 Geo. I. ch. 8, 30; 17 Geo. II. c. 6; 19 Geo. II. c. 1; 34 Geo. III. c. 54; which was followed by subsequent Acts during the then existing War. See the Discussion on the Writ of Habeas Corpus by Lord Chief Justice Wilmot, in his Reports, p. 77; some Parts of which have been superseded by the Enactments in the following Number.

The recent Alteration of the Law, although necessary to give Effect to the Spirit and Principles of the former Enactment, did not pass without considerable Opposition; but the Arguments against it seemed principally to consist in the usual Topic of the Dangers of Innovation. The Opposition was, in a previous Session, attended with Success; and the final Adoption of the Measure may seem as a Lesson to those, whose Attention is directed to beneficial Alterations of the Law, not to be discouraged by a temporary Failure.

The Liberty of the Subject would be materially promoted by giving the Judges a discretionary Power to discharge from illegal Commitments, by Rule of Court or Oder, without the Necessity of the actual Appearance of the Party, which, in most Cases, has no other Effect than a great Accumulation of Expense, and the Necessity of which often occasions a mutual Failure of Justice; as any Person who has been in the Habit of perusing the Calendars of Courts of Quarter Sessions will be easily convinced.

'whereby many of the King's Subjects have been and hereafter may be long detained in Prison, in such Cases where by Law they are Bailable, to their great Charges and Vexation:'

No. 4. 31 Charles II. c. 2.

II. For the Prevention whereof, and the more speedy Relief of all Persons imprisoned for any such criminal or supposed criminal Matters; Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority thereof, That whensoever any Person or Persons shall bring any *Habeas Corpus* directed unto any Sheriff or Sheriffs, Gaoler, Minister or other Person whatsoever, for any Person in his or their Custody, and the said Writ shall be served upon the said Officer, or left at the Gaol or Prison with any of the Under-Officers, Under-Keepers, or Deputy of the said Officers or Keepers, that the said Officer or Officers, his or their Under-Officers, Under-Keepers or Deputies, shall within three Days after the Service thereof as aforesaid (unless the Commitment aforesaid were for Treason or Felony, plainly and specially expressed in the Warrant of Commitment) upon Payment or Tender of the Charges of bringing the said Prisoner, to be ascertained by the Judge or Court that awarded the same, and indorsed upon the said Writ, not exceeding twelve Pence *per* Mile, and upon Security given by his own Bond to pay the Charges of carrying back the Prisoner, if he shall be remanded by the Court or Judge to which he shall be brought according to the true Intent of this present Act, and that he will not make any Escape by the Way, make Return of such Writ; and bring or cause to be brought the Body of the Party so committed or restrained, unto or before the Lord Chancellor, or Lord Keeper of the Great Seal of *England* for the Time being, or the Judges or Barons of the said Court from whence the said Writ shall issue, or unto and before such other Person or Persons before whom the said Writ is made returnable, according to the Command thereof; and shall then likewise certify the true Causes of his Detainer or Imprisonment, unless the Commitment of the said Party be in any Place beyond the Distance of twenty Miles from the Place or Places where such Court or Person is or shall be residing; and if beyond the Distance of twenty Miles, and not above one hundred Miles, then within the Space of ten Days, and if beyond the Distance of one hundred Miles, then within the Space of twenty Days, after such Delivery aforesaid, and not longer.

Writs of Habeas Corpus within three Days after Service to be returned, and the Body brought, if within twenty Miles, &c.

III. And to the Intent that no Sheriff, Gaoler or other Officer may pretend Ignorance of the Import of any such Writ; Be it enacted by the Authority aforesaid, That all such Writs shall be marked in this Manner, *Per Statutum tricesimo primo Caroli Secundi Regis*, and shall be signed by the Person that awards the same; and if any Person or Persons shall be or stand committed or detained as aforesaid, for any Crime, (1.)

Such Writs how to be marked.

Writs of Habeas Corpus, and the Proceedings thereon in Vacation Time.

(1.) Q. if a Commitment by a Justice of Peace on Conviction in a Penalty under the Excise Laws is a Commitment for a Crime, so as to subject

No. 4.
31 Charles II. c. 2.

unless for Felony or Treason plainly expressed in the Warrant of Commitment, in the Vacation-Time, and out of Term, it shall and may be lawful to and for the Person or Persons so committed or detained (other than Persons Convict or in Execution by legal Process) or any one in his or their Behalf, to appeal or complain to the Lord Chancellor or Lord Keeper, or any one of his Majesty's Justices, either of the one Bench or of the other, or the Barons of the Exchequer of the Degree of the Coif; and the said Chancellor, Lord Keeper, Justices or Barons or any of them, upon View of the Copy or Copies of the Warrant or Warrants of Commitment and Detainer, or otherwise upon Oath made that such Copy or Copies were denied to be given by such Person or Persons in whose Custody the Prisoner or Prisoners is or are detained, are hereby authorised, and required, upon Request made in Writing by such Person or Persons, or any on his, her or their Behalf, attested and subscribed by two Witnesses who were present at the Delivery of the same, to award and grant an *Habeas Corpus* under the Seal of such Court whereof he shall then be one of the Judges, to be directed to the Officer or Officers in whose Custody the Party so committed or detained shall be, returnable *immediate* before the said Lord Chancellor or Lord Keeper, or such Justice, Baron or any other Justice or Baron of the Degree of the Coif of any of the said Courts; and upon Service thereof as aforesaid, the Officer or Officers, his or their Under-Officer or Under-Officers, Under-Keeper or Under-Keepers, or their Deputy, in whose Custody the Party is so committed or detained, shall within the Times respectively before limited, bring such Prisoner or Prisoners before the said Lord Chancellor or Lord Keeper, or such Justices, Barons or one of them, before whom the said Writ is made returnable, and in case of his Absence before any other of them, with the Return of such Writ, and the true Causes of the Commitment and Detainer; and thereupon within two Days after the Party shall be brought before them, the said Lord-Chancellor or Lord-Keeper, or such Justice or Baron before whom the Prisoner shall be brought as aforesaid, shall discharge the said Prisoner from his Imprisonment, taking his or their Recognizance, with one or more Surety or Sureties, in any Sum according to their Discretions, having regard to the Quality of the Prisoner and Nature of the Offence, for his or their Appearance in the Court of King's Bench the Term following, or at the next Assizes, Sessions or General Gaol-delivery of and for such County, City or Place where the Commitment was, or where the Offence was committed, or in such other Court where the said Offence is properly cognizable, as the Case shall require, and then shall certify the said Writ with the Return thereof, and the said Recognizance or Recognizances into the said Court where such Appearance is to be made; unless it shall appear

the Gaoler to the Penalties in sec. 5; Huntley v. Luscombe, 2 B. and P. 530.

No. 4. 31 Charles II. c. 2.

unto the said Lord Chancellor or Lord-Keeper, or Justice or Justices, or Baron or Barons, that the Party so committed is detained upon a legal Process, Order or Warrant, out of some Court that hath Jurisdiction of Criminal Matters, or by some Warrant signed and sealed with the Hand and Seal of any of the said Justices or Barons, or some Justice or Justices of the Peace, for such Matters or Offences for the which by the Law the Prisoner is not bailable. (2.)

Persons neglecting two Terms to pray a Habeas Corpus, shall have none in Vacation Time, in pursuance of this Act.

IV. Provided always, and be it enacted, That if any Person shall have wilfully neglected by the Space of two whole Terms after his Imprisonment, to pray a *Habeas Corpus* for his Enlargement, such Person so wilfully neglecting shall not have any *Habeas Corpus* to be granted in Vacation-time, in pursuance of this Act.

Officers how to be proceeded against for not obeying such Writs.

V. And be it further enacted by the Authority aforesaid, That if any Officer or Officers, his or their Under-Officer or Under-Officers, Under-Keeper or Under-Keepers, or Deputy, shall neglect or refuse to make the Returns aforesaid, or to bring the Body or Bodies of the Prisoner or Prisoners according to the Command of the said Writ, within the respective Times aforesaid, or upon Demand (3.) made by the Prisoner or Person in his Behalf, shall refuse to deliver, or within the Space of six Hours after demand shall not deliver, to the Person so demanding, a true Copy of the Warrant or Warrants of Commitment and Detainer of such Prisoner, which he and they are hereby required to deliver accordingly; all and every the Head Gaolers and Keepers of such Prisons, and such other Person in whose Custody the Prisoner shall be detained, shall for the first Offence forfeit to the Prisoner or Party grieved the Sum of one hundred Pounds; and for the second Offence the Sum of two hundred Pounds, and shall and is hereby made incapable to hold or execute his said Office; the said Penalties to be recovered by the Prisoner or Party grieved, his Executors or Administrators, against such Offender, his Executors or Administrators, by any Action (4.) of Debt, Suit, Bill, Plaint or Information, in any of the King's* Courts at *Westminster*, wherein no Essoin, Protection, Privilege, Injunction, Wager of Law, or Stay of Prosecution by *Non vult ulterius prosequi* or otherwise, shall be admitted or allowed, or any more than one Imparlance; and any Recovery or Judgment at the Suit of any Party grieved, shall be a sufficient Conviction for the first Offence; and any after Recovery or Judgment at the Suit of a Party grieved for any Offence after the first Judgment,

(2.) It is the constant Practice of the Court, notwithstanding the Warrant of Commitment be defective, to remand the Prisoners, if it appear, on reading the Depositions, that there is a fair Ground to authorize them; R. v. Marks, 3 E. 157.

(3.) Demand on the Turnkey, the Gaoler being accessible, is not sufficient to subject the Gaoler to the Penalty; Huntley v. Luscombe, 2 B. and P. 530.

(4.) The Plaintiff in such Action is entitled to Costs; Ward v. Snell, 1 H. B. 10.

No. 4.
31 Charles II.
c. 2.

shall be a sufficient Conviction to bring the Officers or Person within the said Penalty for the second Offence.

Persons set at large not to be recommitted but by order of Court.

VI. And for the Prevention of unjust Vexation by reiterated Commitments for the same Offence; Be it enacted by the Authority aforesaid, That no Person or Persons which shall be delivered or set at large upon any *Habeas Corpus*, shall at any Time hereafter be again imprisoned or committed for the same Offence by any Person or Persons whatsoever, other than by the legal Order and Process of such Court wherein he or they shall be bound by Recognizance to appear, or other Court having Jurisdiction of the Cause; and if any other Person or Persons shall knowingly contrary to this Act recommit or imprison, or knowingly procure or cause to be recommitted or imprisoned, for the same Offence or pretended Offence, any Person or Persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the Prisoner or Party grieved the Sum of five hundred Pounds; any colourable Pretence or Variation in the Warrant or Warrants of Commitment notwithstanding, to be recovered as aforesaid.

Persons committed for Treason or Felony, shall be indicted the next Term, or let to Bail;

VII. Provided always, and be it further enacted, That if any Person or Persons shall be committed for High Treason or Felony, plainly and specially expressed in the Warrant of Commitment, upon his Prayer or Petition in open Court the first Week of the Term, or first Day of the Sessions of *Oyer* and *Terminer* or General Gaol-delivery, to be brought to his Trial, shall not be indicted some Time in the next Term, Sessions of *Oyer* and *Terminer*, or General Gaol-delivery, after such Commitment; it shall and may be lawful to and for the Judges of the Court of King's Bench and Justices of *Oyer* and *Terminer* or General Gaol-delivery, and they are hereby required, upon Motion to them made in open Court the last Day of the Term, Sessions or Gaol-delivery, either by the Prisoner or any One in his Behalf, to set at Liberty the Prisoner upon Bail, unless it appear to the Judges and Justices upon Oath made, that the Witnesses for the King could not be produced the same Term, Sessions or General Gaol-Delivery; and if any Person or Persons committed as aforesaid, upon his Prayer or Petition in open Court the First Week of the Term or First Day of the Sessions of *Oyer* and *Terminer* and General Gaol-delivery, to be brought to his Trial, shall not be indicted and tried the Second Term, Sessions of *Oyer* and *Terminer* or General Gaol-delivery, after his Commitment, or upon his Trial shall be acquitted, he shall be discharged from his Imprisonment.

and tried the Term, &c. after or discharged.

VIII. Provided always, That nothing in this Act shall extend to discharge out of Prison any Person charged in Debt, or [illegible] with Process in any Civil Cause, but that after [illegible]
crir[illegible]
Law, for such other Suit[illegible]

IX. Provided always, and be it enacted by the Authority aforesaid, That if any Person or Persons, Subjects of this Realm, shall be committed to any Prison, or in Custody of any Officer or Officers whatsoever, for any criminal or supposed criminal Matter, that the said Person shall not be removed from the said Prison and Custody into the Custody of any other Officer or Officers; unless it be by *Habeas Corpus* or some other legal Writ; or where the Prisoner is delivered to the Constable or other inferior Officer to carry such Prisoner to some common Gaol; or where any Person is sent by Order of any Judge of Assize or Justice of the Peace, to any common Workhouse or House of Correction; or where the Prisoner is removed from one Prison or Place to another within the same County, in order to his or her Trial or Discharge in due Course of Law; or in case of sudden Fire or Infection, or other Necessity; and if any Person or Persons shall, after such Commitment aforesaid, make out and sign, or countersign any Warrant or Warrants for such Removal aforesaid, contrary to this Act; as well he that makes or signs, or countersigns such Warrant or Warrants, as the Officer or Officers that obey or execute the same, shall suffer or incur the Pains and Forfeitures in this Act before mentioned, both for the first and second Offence respectively, to be recovered in Manner aforesaid by the Party grieved.

No. 4.
31 Charles II. c. 2.

X. Provided also, and be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for any Prisoner and Prisoners as aforesaid, to move and obtain his or their *Habeas Corpus*, as well out of the High Court of Chancery or Court of Exchequer, as out of the Courts of King's Bench or Common Pleas, or either of them; and if the said Lord Chancellor or Lord Keeper, or any Judge or Judges, Baron or Barons for the Time being of the Degree of the Coif, of any of the Courts aforesaid, in the Vacation Time, upon View of the Copy or Copies of the Warrant or Warrants of Commitment or Detainer, or upon Oath made that such Copy or Copies were denied as aforesaid, shall deny any Writ of *Habeas Corpus*, by this Act required to be granted, being moved for as aforesaid, they shall severally forfeit to the Prisoner or Party grieved the Sum of five hundred Pounds, to be recovered in Manner aforesaid.

The Penalty for denying a Habeas Corpus.

XI. And be it declared and enacted by the Authority aforesaid, That an *Habeas Corpus* according to the true Intent and Meaning of this Act may be directed and run into any County Palatine, the Cinque-Ports, or other privileged Places within the Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, and the Islands of *Jersey* or *Guernsey*; any Law or Usage to the contrary notwithstanding.

Habeas Corpus shall run in Counties Palatine and privileged Places.

XII. And for preventing illegal Imprisonments in Prisons beyond the Seas; Be it further enacted by the Authority aforesaid, That no Subject of this Realm that now is, or hereafter shall be an Inhabitant or Resiant of this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, shall

No Subject shall be sent to Foreign Prisons.

No. 4. 31 Charles II. c. 2.

or may be sent Prisoner into *Scotland, Ireland, Jersey, Guernsey, Tangier*, or into Parts, Garrisons, Islands or Places beyond the Seas, which are or at any Time hereafter shall be within or without the Dominions of his Majesty, his Heirs or Successors; and that every such Imprisonment is hereby enacted and adjudged to be illegal; and that if any of the said Subjects now is or hereafter shall be so imprisoned, every such Person and Persons so imprisoned, shall and may for every such Imprisonment maintain by virtue of this Act an Action or Actions of false Imprisonment in any of his Majesty's Courts of Record, against the Person or Persons by whom he or she shall be so committed, detained, imprisoned, sent Prisoner or transported, contrary to the true Meaning of this Act, and against all or any Person or Persons that shall frame, contrive, write, seal or countersign any Warrant or Writing for such Commitment, Detainer, Imprisonment or Transportation, or shall be advising, aiding or assisting in the same, or any of them; and the Plaintiff in every such Action shall have Judgment to recover his treble Costs, besides Damages, which Damages so to be given, shall not be less than five hundred Pounds; in which Action no Delay, Stay or Stop of Proceeding by Rule, Order or Command, nor no Injunction, Protection or Privilege whatsoever, nor any more than one Imparlance shall be allowed, excepting such Rule of the Court wherein the Action shall depend, made in open Court, as shall be thought in Justice necessary, for special Cause to be expressed in the said Rule; and the Person or Persons who shall knowingly frame, contrive, write, seal or countersign any Warrant for such Commitment, Detainer or Transportation, or shall so commit, detain, imprison or transport any Person or Persons contrary to this Act, or be any ways advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any Office of Trust or Profit within the said Realm of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, or any of the Islands, Territories or Dominions thereunto belonging; and shall incur and sustain the Pains, Penalties and Forfeitures limited, ordained and provided in and by the Statute of Provision and *Præmunire* made in the sixteenth Year of King *Richard* the Second; and be incapable of any Pardon from the King, his Heirs or Successors, of the said Forfeitures, Losses or Disabilities, or any of them.

The Penalty.

16 R. 2. c. 5.

Persons receiving Earnest upon Contracts to be transported, excepted.

XIII. Provided always, That nothing in this Act shall extend to give Benefit to any Person who shall by Contract in Writing agree with any Merchant or Owner of any Plantation, or other Person whatsoever, to be transported to any Parts beyond the Seas, and receive Earnest upon such Agreement, although that afterwards such Person shall renounce such Contract.

Persons convicted of Felony, and praying Transportation, excepted.

XIV. Provided always, and be it enacted, That if any Person or Persons lawfully convicted of any Felony, shall in open Court pray to be transported beyond the Seas, and the Court shall think fit to leave him or them in Prison for that Pur-

pose, such Person or Persons may be transported into any Parts beyond the Seas; this Act, or any Thing therein contained to the contrary notwithstanding.

No. 4. 31 Charles II. c. 2.

XV. Provided also, and be it enacted, That nothing herein contained shall be deemed, construed or taken, to extend to the Imprisonment of any Person before the first Day of *June* one thousand six hundred seventy and nine, or to any Thing advised, procured, or otherwise done, relating to such Imprisonment; any Thing herein contained to the contrary notwithstanding.

Imprisonments before the first of June, 1769, excepted.

XVI. Provided also, That if any Person or Persons at any Time resiant in this Realm, shall have committed any capital Offence in *Scotland* or *Ireland*, or any of the Islands, or foreign Plantations of the King, his Heirs or Successors, where he or she ought to be tried for such Offence, such Person or Persons may be sent to such Place, there to receive such Trial, in such Manner as the same might have been used before the making of this Act; any Thing herein contained to the contrary notwithstanding.

Offenders may be sent to be tried where their Offences were committed.

XVII. Provided also, and be it enacted, That no Person or Persons shall be sued, impleaded, molested or troubled for any Offence against this Act, unless the Party offending be sued or impleaded for the same within two Years at the most after such Time wherein the Offence shall be committed, in case the Party grieved shall not be then in Prison; and if he shall be in Prison, then within the Space of Two Years after the Decease of the Person imprisoned, or his or her Delivery out of Prison, which shall first happen.

Prosecutions for Offences within what Time to be made.

XVIII. And to the Intent no Person may avoid his Trial at the Assizes or General Gaol Delivery, by procuring his Removal before the Assizes, at such Time as he cannot be brought back to receive his Trial there, be it enacted, That, after the Assizes proclaimed for the County where the Prisoner is detained, no Person shall be removed from the common Goal upon any *Habeas Corpus* granted in pursuance of this Act, but upon any such *Habeas Corpus* shall be brought before the Judge of Assize in open Court, who is thereupon to do what to Justice shall appertain.

After the Assizes proclaimed, no Prisoner to be removed, but before the Judge of Assize.

XIX. Provided nevertheless, That, after the Assizes are ended, any Person or Persons detained, may have his or her *Habeas Corpus* according to the Direction and Intention of this Act.

XX. And be it also enacted by the Authority aforesaid, That if any Information, Suit or Action shall be brought or exhibited against any Person or Persons for any Offence committed or to be committed against the Form of this Law, it shall be lawful for such Defendants to plead the General Issue, that they are Not guilty, or that they owe nothing, and to give such special Matter in Evidence to the Jury that shall try the same, which Matter being pleaded had been good and sufficient Matter of Law to have discharged the said Defendant or Defendants against the said Information, Suit, or Ac-

In Suits for Offence against this Law, the Defendants may plead the General Issue, &c.

No. 4.
31 Charles II. c. 2.

tion, and the said Matter shall be then as available to him or them, to all Intents and Purposes, as if he or they had sufficiently pleaded, set forth, or alledged the same Matter in Bar or Discharge of such Information, Suit or Action.

'XXI. And, because many Times Persons charged with 'Petty Treason or Felony, or as Accessaries thereunto, are 'committed upon Suspicion only, whereupon they are bail-'able, or not, according as the Circumstances making out 'that Suspicion are more or less weighty, which are best 'known to the Justices of Peace that committed the Persons, 'and have the Examinations before them, or to other Justices 'of the Peace in the County;' be it therefore enacted, That where any Person shall appear to be committed by any Judge or Justice of the Peace, and charged as Accessary before the Fact, to any petty Treason or Felony, or upon Suspicion thereof, or with Suspicion of petty Treason or Felony, which petty Treason or Felony shall be plainly and specially expressed in the Warrant of Commitment, that such Person shall not be removed or bailed by virtue of this Act, or in any other Manner than they might have been before the making of this Act.

Persons committed as Accessaries before to Petty Treason or Felony, shall not be removed or bailed otherwise than before this Act made.

## No. 5.

56 George III. c. 100.—An Act for more effectually securing the Liberty of the Subject.—[1st. *July* 1816.]

No. 5.
56 George III. c. 100.

WHEREAS the Writ of *Habeas Corpus* hath been found by Experience to be an expeditious and effectual Method of restoring any Person to his Liberty, who hath been unjustly deprived thereof: And whereas extending the Remedy of such Writ, and enforcing Obedience thereunto, and preventing Delays in the Execution thereof, will be advantageous to the Public: And whereas the Provisions made by an Act passed in *England* in the Thirty-first Year of King *Charles* the Second, intituled, "An Act for the better securing the Liberty of the Subject, and for Prevention of Imprisonment beyond the Seas," and also by an Act passed in *Ireland* in the twenty-first and twenty-second Years of his present Majesty, intituled, "An Act for better securing the Liberty of the Subject," only extend to Cases of Commitment or Detainer for criminal or supposed criminal Matter; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That where any Person shall be confined or restrained of his or her Liberty (otherwise than for some criminal or supposed criminal Matter, and except Persons imprisoned for Debt or by Process in any civil Suit) within that Part of *Great Britain* called *England*, Dominion of *Wales*, or Town

31 Car. 2. c. 2.

Irish Act, 21 and 22 Geo. 3.

Judges, to issue in Vacation, Writs of Habeas Corpus returnable immediately, in Cases other than for Criminal Matter, or for Debt.

No. 5. 56 George III. c. 100.

of *Berwick-upon-Tweed*, or the Isles of *Jersey*, *Guernsey*, or *Man*, it shall and may be lawful for any one of the Barons of the Exchequer, of the Degree of the Coif, as well as for any one of the Justices of one Bench or the other; and where any Person shall be so confined in *Ireland*, it shall and may be lawful for any one of the Barons of the Exchequer, or of the Justices of one Bench or the other in *Ireland*; and they are hereby required, upon Complaint made to them by or on the Behalf of the Person so confined or restrained, if it shall appear by Affidavit or Affirmation (in Cases where by Law an Affirmation is allowed) that there is a probable and reasonable Ground for such Complaint, to award in Vacation Time, a Writ of *Habeas Corpus ad subjiciendum*, under the Seal of such Court, whereof he or they shall then be Judges or one of the Judges, to be directed to the Person or Persons in whose Custody or Power the Party so confined or restrained shall be, returnable immediately before the Person so awarding the same, or before any other Judge of the Court under the Seal of which the said Writ issued.

Non-obedience to such Writ, to be a Contempt of Court and punishable accordingly.

II. And be it further enacted by the Authority aforesaid, That if the Person or Persons to whom any Writ of *Habeas Corpus* shall be directed according to the Provision of this Act, upon Service of such Writ, either by the actual Delivery thereof to him, her, or them, or by leaving the same at the Place where the Party shall be confined or restrained, with any Servant or Agent of the Person or Persons so confining or restraining, shall wilfully neglect or refuse to make a Return or pay Obedience thereto, he, she, or they shall be deemed guilty of a Contempt of the Court, under the Seal whereof such Writ shall have issued; and it shall be lawful to and for the said Justice or Baron, before whom such Writ shall be returnable, upon Proof made by Affidavit of wilful Disobedience of the said Writ, to issue a Warrant under his Hand and Seal, for the apprehending and bringing before him, or before some other Justice or Baron of the same Court, the Person or Persons so wilfully disobeying the said Writ, in order to his, her, or their being bound to the King's Majesty, with Two sufficient Sureties, in such Sum as in the Warrant shall be expressed, with Condition to appear in the Court of which the said Justice or Baron is a Judge, at a Day in the ensuing Term to be mentioned in the said Warrant, to answer the Matter of Contempt with which he, she, or they are charged; and in case of Neglect or Refusal to become bound as aforesaid, it shall be lawful for such Justice or Baron to commit such Person or Persons so neglecting or refusing, to the Jail or Prison of the Court of which such Justice or Baron shall be a Judge, there to remain, until he, she, or they shall have become bound as aforesaid, or shall be discharged by Order of the Court in Term Time, or by Order of one of the Justices or Barons of the Court in Vacation; and the Recognizance or Recognizances to be taken thereupon shall be returned and filed in the same Court, and shall continue in force until the Matter of

No. 5. 56 George III. c. 100.

such Contempt shall have been heard and determined, unless sooner ordered by the Court to be discharged: Provided, that if such Writ shall be awarded so late in the Vacation by any one of the said Justices or Barons, that, in his Opinion, Obedience thereto cannot be conveniently paid during such Vacation, the same shall and may, at his Discretion, be made returnable in the Court of which the said Justice or Baron shall be a Justice or Baron, at a Day certain in the next Term; and the said Court shall and may proceed thereupon, and award Process of Contempt in case of Disobedience thereto, in like Manner as upon Disobedience to any Writ originally awarded by the said Court: Provided also, that if such Writ shall be awarded by the Court of King's Bench, or the Court of Common Pleas, or Court of Exchequer, in the said Countries respectively, which last-mentioned Court shall have like Power to award such Writs as the respective Courts of King's Bench and Common Pleas in each of the said Countries now have, in Term, but so late that, in the Judgment of the Court, Obedience thereto cannot be conveniently paid during such Term, the same shall and may, at the Discretion of the said Court, be made returnable at a Day certain in the then next Vacation, before any Justice or Baron of the Degree of the Coif, or if in *Ireland*, before any Justice or Baron of the same Court, who shall and may proceed thereupon, in such Manner as by this Act is directed, concerning Writs issuing in and made returnable during the Vacation.

Judges to make Writs of Habeas Corpus, issued in Vacatoin, returnable in Court in the next Term.

Courts to make Writs issued in Term, returnable in Vacation.

III. And be it further enacted by the Authority aforesaid, That in all Cases provided for by this Act, although the Return to any Writ of *Habeas Corpus* shall be good and sufficient in Law, it shall be lawful for the Justice or Baron before whom such Writ may be returnable, to proceed to examine into the Truth of the Facts set forth in such Return, by Affidavit or by Affirmation (in Cases where an Affirmation is allowed by Law) and to do therein as to Justice shall appertain; and if such Writ shall be returned before any one of the said Justices or Barons, and it shall appear doubtful to him on such Examination, whether the material Facts set forth in the said Return, or any of them, be true or not; in such Case it shall and may be lawful for the said Justice or Baron to let to Bail the said Person so confined or restrained, upon his or her entering into a Recognizance with one or more Sureties, or in case of Infancy or Coverture, or other Disability, upon Security by Recognizance, in a reasonable Sum, to appear in the Court of which the said Justice or Baron shall be a Justice or Baron, upon a Day certain in the Term following, and so from Day to Day as the Court shall require, and to abide such Order as the Court shall make in and concerning the Premises; and such Justice or Baron shall transmit into the same Court the said Writ and Return, together with such Recognizance, Affidavits, and Affirmations; and thereupon it shall be lawful for the said Court to proceed to examine into the Truth of the Facts set forth in the Return, in a summary Way by Affidavit or

Judges to inquire into the Truth of Facts contained in Return.

Judge to bail on Recognizance to appear in Term, &c.

No. 5. 56 George III. c. 100.

Affirmation (in Cases where by Law, Affirmation is allowed), and to order and determine touching the discharging, bailing, or remanding the Party.

Court may controvert the Truth of the Return.

IV. And be it further enacted by the Authority aforesaid, That the like Proceeding may be had in the Court for controverting the Truth of the Return to any such Writ of *Habeas Corpus*, awarded as aforesaid, although such Writ shall be awarded by the said Court itself, or be returnable therein.

Writ may run into Counties Palatine, Cinque Ports, and privileged Places, &c.

V. And be it declared and enacted by the Authority aforesaid, That a Writ of *Habeas Corpus*, according to the true Intent and Meaning of this Act, may be directed and run into any County Palatine or Cinque Port, or any other privileged Place within that Part of *Great Britain* called *England*, Dominion of *Wales*, and Town of *Berwick-upon-Tweed*, and the Isles of *Jersey*, *Guernsey*, and *Man*, respectively; and also in any Port, Harbour, Road, Creek, or Bay, upon the Coast of *England* or *Wales*, although the same should lie out of the Body of any County; and if such Writ shall issue in *Ireland*, the same may be directed and run into any Port, Harbour, Road, Creek, or Bay, although the same should not be in the Body of any County; any Law or Usage to the contrary in anywise notwithstanding.

Process of Contempt may be awarded in Vacation against Persons disobeying Writs of Habeas Corpus in Cases within Stat. 31 Car 2, c. 2.

VI. And be it further enacted by the Authority aforesaid, That the several Provisions made in this Act, touching the making Writs of *Habeas Corpus*, issuing in Time of Vacation, returnable into the said Courts, or for making such Writs awarded in Term Time, returnable in Vacation, as the Cases may respectively happen, and also for making wilful Disobedience thereto a Contempt of the Court, and for issuing Warrants to apprehend and bring before the said Justices or Barons, or any of them, any Person or Persons wilfully disobeying any such Writ; and in case of Neglect or Refusal to become bound as aforesaid, for committing the Person or Persons so neglecting or refusing to Jail as aforesaid, respecting the Recognizances to be taken as aforesaid, and the Proceeding or Proceedings thereon, shall extend to all Writs of *Habeas Corpus* awarded in pursuance of the said Act, passed in *England* in the thirty-first Year of the Reign of King *Charles* the Second, or of the said Act passed in *Ireland* in the twenty-first and twenty-second Years of his present Majesty, and hereinbefore recited, in as ample and beneficial a Manner as if such Writs and the said Cases arising thereon had been herein-before specially named and provided for respectively.

# PART IV. CLASS XVIII.

## REAL ACTIONS.*

* I have thought it desirable to notice the Titles of the several Acts upon this Subject, although most of them may be regarded as completely obsolete, and on that Account I have not chosen to swell the Work by inserting the Acts at large. It will appear from the List exhibited, how great an Importance was attached to the Subject in the early Stages of our Legislation. At present it meets with every Discouragement, and the Court will give no Assistance in case of any accidental Error in the Proceedings of the Demandant.

### No. 1.

20 Henry III. (Merton) c. 1.—A Woman shall recover Damages in a Writ of Dower.

[Inserted ante. P. II. Cl. I. No. 2.]

### No. 2.

20 Henry III. c. 3.—Enquiry and Punishment of Redesseisin.

### No. 3.

51 Henry III. st. 2.—Concerning general Days in Bank in Real Actions.

### No. 4.

51 Henry III. st. 3.—Concerning general Days in a Writ of Dower.

### No. 5.

52 Henry III. c. 7.—Process in *Communi Custodia.* Ward by reason of Ward.

## No. 6.

## 52 Henry III. c. 8.—The Punishment of those which commit Redisseisin.

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## No. 7.

## 52 Henry III. c. 12.—Days given in Dower, Assise of *Darraine Presentment*, and *Quare Impedit*.

Cotton *MS.*

IN placito vero dotis [*de dote*] quod vocatur unde nichil habet, dentur de cetero quatuor dies per annum ad minus, & plures si commode fieri possit, ita quod habeant quinque vel sex per annum ad minus. In assisis autem ultime presentationis, & in placito quare impedit de ecclesiis vacantibus, dentur dies de quindena in quindenam, vel de tribus septimanis in tres septimanas, prout locus propinquus fuerit, vel remotus. In placito vero quare impedit, si ad primum diem, ad quem summonitus fuerit, non venerit nec essonium miserit impeditor, attachietur ad alium diem, quo die si non venerit, nec esson' miserit, distringatur per magnum districcionem superius dictam; & si tunc non venerit, per ejus defaltam scribatur Episcopo loci, quod reclamatio impeditoris illa vice conquerenti non obsistat, salvo impeditori alias jure suo, cum inde loqui voluerit. Eadem lex de attachiamentis faciendis de omnibus brevibus, ubi attachiamenta jacent, quoad districciones faciendas firmiter observetur; ita tamen, quod secundum attachiamentum fiat per meliores plegios, et postmodum ultima districcio.

No. 7. 52 Henry III. c. 12.

'IN a Plea of Dower, that is 'called *Unde nihil habet*, 'from henceforth four Days 'shall be given in the Year at 'the least, and more if conveniently it may be, so that 'they shall have five or six 'Days at the least in the Year. 'In Assises of *Darraine Presentment*, and in a Plea of '*Quare Impedit*, of Churches 'vacant, Days shall be given 'from fifteen to fifteen, or 'from three Weeks to three 'Weeks, as the Place shall 'hap to be near, or far. And 'in a Plea of *Quare impedit*, if 'the Disturber come not at the 'first Day that he is summoned, 'nor cast no Essoin, then he 'shall be attached at another 'Day; at which Day if he 'come not, nor cast no Essoin, 'he shall be distrained by the 'great Distress above given; 'And if he come not then, 'by his Default a Writ shall 'go to the Bishop of the same 'Place, that the Claim of the 'Disturber for that Time shall 'not be prejudicial to the 'Plaintiff; saving to the Disturber his Right at another 'Time, when he shall sue 'therefore. The same Law, 'as to the making of Attachments, shall from henceforth 'be observed in all Writs 'where Attachments lie, as in 'making Distresses, so that

Process in Quare Imped.t.

Cotton *MS.*

No. 7. 52 Henry III. c. 12.

'the second Attachment shall 'be made by better Pledges, 'and afterwards the last Distress.'

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## No. 8.

### 52 Henry III. c. 26.—What Day shall be given to him that is vouched to Warranty.

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## No. 9.

### 52 Henry III. c. 29.—In what Case a Writ of *Entrie sur disseisin* in the *Post* doth lie.

No. 9. 52 Henry III. c. 29.

IT is provided also, That if those Alienations '(whereupon a Writ of Entry 'was wont to be granted) hap to 'be made in so many Degrees, 'that by reason thereof the 'same Writ cannot be made in 'the Form beforetimes used, 'the Plaintiffs shall have a 'Writ to recover their Seisin, 'without making mention of 'the Degrees, into whose 'Hands soever the same shall 'happen to come by such 'Alienations, and that by an 'original Writ to be provided 'therefore by the Council of 'our Lord the King.'

PROVISUM est eciam, quod si alienationes ille, de quibus breve de ingressu dari consuevit, per tot gradus fiant, quod breve illud in forma prius usitata habere [*haberi*] non possit, habeat conquerens breve de recuperanda seisina, sine mencione graduum, ad cujuscunque manus per hujusmodi alienaciones res illa devenerit, per brevia originalia per consilium domini Regis providenda.

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## No. 10.

### 3 Edward I. (Westminster 1) c. 24.—The Remedy if an Officer of the King do disseise any.

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## No. 11.

### 3 Edward I. c. 40.—Voucher to Warranty, and Counterpleading of Voucher.

No. 12.

3 Edward I. c. 41.—The Champion's Oath in a Writ of Right.

No. 12. 3 Edward I. c. 41.

Cotton *MS.*

DE serement as Champions est purveu, pur ceo que rerement avent qe le Champion al demandant ne soit perjurs en ceo qil jure, qil ou son auncestre, qe*son pier [*vist la seisine seignour, ou de son auncestre, & son pier*] lui comanda faire le darrein; qe mes ne soit le Champion al demaundant destreint a ceo jurere; mes soit le serement garde en touz les autres pointz.

'TOUCHING the Oaths of Champions, it is thus provided, because it seldom happened but that the Champion of the Defendant is forsworn, in that he sweareth, that he or his Father saw the Seisine of his Lord, or his Ancestor, and that his Father commanded him to dereign that Right; that from henceforth the Champions of the Demandant shall not be compelled so to swear: Nevertheless his Oath shall be kept in all other Points.'

No. 13.

3 Edward I. c. 42. — Certain Actions wherein after Appearance the Tenant shall not be essoined.

No. 14.

3 Edward I. c. 43.—There shall be no Fourcher by Essoin.

No. 15.

3 Edward I. c. 44.—In what Case Essoin *ultra mare* shall not be allowed.

No. 16.

3 Edward I. c. 47.—In what Case the Nonage of the Heir of the Disseisor or Disseisee shall not prejudice.

No. 17.

3 Edward I. c. 48.—The Remedy where a Guardian maketh a Feoffment of his Ward's Land. Suit by *Prochein Amy.*

## No. 18.

### 3 Edward I. c. 49.—The Tenants Plea in a Writ of Dower.

No. 18. 3 Edward I. c. 41.

I N a Writ of Dower, called *Unde nihil habet*, the 'Writ shall not abate by the Exception of the Tenant, because she hath received her 'Dower of another Man before 'her Writ purchased, unless 'he can shew that she hath 'received Part of her Dower of himself, and in the same 'Town, before the Writ purchased.'

Cotton *MS.*

E N brief de Dowerie, doun dame rien nad, mes ne soit le brief abatu per exceptioun del tenant, purceo qele avera resceu sa dowerie dautre homme avaunt son brief purchace, sil ne puisse monstrer qele eit resceu partie de dowerie de lui mesmes, & en mesme la ville avant son brief purchace.

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## No. 19.

### Edward I. c. 51.—Assises and *Darrain Presentments* at what Time taken.

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## No. 20.

### 6 Edward I. (Gloucester) c. 1.—Several Actions wherein Damages shall be recovered.

[Inserted ante. Class 11. No. 1.]

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## No. 21.

### 6 Edward I. c. 2.—In what Case Nonage of the Plaintiff shall not stay an Enquest.

No. 21. 6 Edward I. c. 2.

'IF a Child within Age be 'holden from his Heritage 'after the Death of his Cosin, 'Grandfather, or Great Grandfather, whereby he is driven 'to his Writ, and his Adversary cometh into the Court, 'and for his Answer alledgeth 'a Feoffment, or pleadeth 'some other Thing, whereby 'the Justices award an Enquest, 'there whereas the Enquest 'was deferred unto the full Age 'of the Infant, now the Enquest shall pass as well as if 'he were of full Age.'

E Si enfaunt dedenz age seit tenu hors de sun heritage apres la mort sun Cusin Ael ou Besael par que il conveigne qe il purchase bref e sun adversaire veigne en Curt e enresponaunt allegge feffement ou autre chose die par quei Justices agardent enqueste la ou enqueste fu delae desque al age si passe ore lenqueste ausi cum il fu de age.

## No. 22.

### 6 Edward I. c. 4.—In what Case a *Cessavit* is maintainable against a Tenant in Fee-farm.

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## No. 23.

### 6 Edward I. c. 5.—Several Tenants against whom an Action of Waste is maintainable.

[Inserted P. II. Cl. 1, No. 7.]

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## No. 24.

### 6 Edward I. c. 6.—Where divers Heirs shall have one Assise of Mortdauncestor.

*Ex Rot. in Turr.* Lond.

PURVEU est ensement qe si home moert & eit plusurs heirs dunt le un est fiz ou fillie frere ou soer nevewe ou nece e les autres soient en plus lointeing degre les heirs eient desoremes recoverer par bref de la chauncelrie de mort de auncestre.

'IT is provided also, That if a Man die, having many Heirs, of whom one is Son or Daughter, Brother or Sister, Nephew or Niece, and the other be of a further Degree, all the Heirs shall recover from henceforth by a Writ of *Mortdauncestor*.' No. 24. 6 Edward

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## No. 25.

### 6 Edward I. c. 7.—A Writ of Entry *in casu proviso*, upon a Woman's Alienation of Dower.

ENSEMENT si femme vende ou donne en fee ou a terme de vie tenement qe ele tient en dowaire establi est qe le heir ou autre a qi la terre devereit revertier apres le deces la femme eit meintenaunt recoverer a demander la terre par bref de entre fet de ceo en la chauncelrie.

'ALSO if a Woman sell or give in Fee, or for Term of Life, the Land that she holdeth in Dower; it is ordained, That the Heir, or other to whom the Land ought to revert after the Death of such Woman, shall have present Recovery to demand the Land by a Writ of Entry made thereof in the Chancery.' No. 25. 6 Edward I. c. 7.

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## No. 26.

### 6 Edward I. c. 10.—The Husband and Wife being impleaded, shall not fourch by Essoin.

No. 27.

6 Edward I. c. 11.—A feigned Recovery against him in the Reversion, to make the Termor lose his Term.

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No. 28.

6 Edward I. c. 12.—One impleaded in *London* voucheth Foreign Warranty.

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No. 29.

6 Edward I. c. 13.—No Waste shall be made hanging a Suit for the Land.

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No. 30.

9 Edward I.—A Correction of the Twelfth Chapter of the Statute of *Gloucester*, touching calling Foreigns to Warranty in *London*.

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No. 31.

13 Edward I. (Westminster 2) c. 1.—In Gifts in Tail the Donor's Will shall be observed. The Form of a *Formedon*.

[Inserted Pt. II. Cl. 1. No. 8.]

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No. 32.

13 Edward I. c. 3.—A *Cui in vita* for the Wife. Where a Wife, or he in Reversion, shall be received.

No. 32. 13 Edward I. c. 3. A Cui in vita for the Wife, where her deceased Husband lost by Default.

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| | *Ex Rot. in Turr.* Lond. |
| " IN case when a Man doth " lose by Default the Land " which was the Right of his " Wife, it was very hard that " the Wife, after the Death of " her Husband, had none other " Recovery but by a Writ of " Right;" 'wherefore our ' Lord the King hath ordained, ' That a Woman, after the ' Death of her Husband, shall ' recover by a Writ of Entry ' (whereto she could not dis- | IN casu quando vir amisit per defaltam tenementum quod fuit jus uxoris sue durum fuit quod uxor post mortem viri sui non habuit aliud recuperare quam per breve de Recto propter quod Dominus Rex statuit quod mulier post mortem viri sui habeat recuperare per breve de Ingressu cui ipsa in vita sua contradicere non potuit quod in forma predicta erit |

*Ex Rot. in Turr.* Lond.

placitand'. Si contra petitionem mulieris tenens excipiat quod habuit ingressum per judicium & comperto quod per defaltam ad quod tenens necesse habet respondere si ab eo queratur tunc necesse habet ulterius ostendere jus suum secundum formam brevis quod prius impetravit super virum & uxorem. Et si verificare poterit quod jus habet in tenemento petito nichil capiat mulier per breve suum quod si ostendere non poterit recuperet mulier tenementum petitum hoc observato quod si vir absentaverit se & noluerit jus uxoris sue defendere vel invita uxore reddere voluerit si uxor ante judicium venerit parata petenti respondere & jus suum defendere admittatur uxor. Eodem modo si tenens in dotem per Legem Anglie vel aliter ad terminum vite vel per donum in quo reservatur reversio fecerit defaltam vel reddere voluerit admittantur heredes & illi ad quos spectat reversio ad responsionem sivenerint ante judicium & si per defaltam aut redditionem reddatur judicium tunc habeant heredes & illi ad quos spectat reversio post mortem hujusmodi tenentium recuperare per breve de Ingressu in quo servetur idem, processus sicut dictum est supra in casu ubi vir amittit tenementum uxoris & sic in casibus predictis due concurrunt actiones una inter petentem & tenentem & alia inter tenentem jus suum ostendentem & petentem.

'agree during his Life) which 'shall be pleaded in Form 'under-written. If the Te'nant do except against the 'Demand of the Wife, that 'he entered by Judgment, and 'it be found that his Entry 'was by Default, whereto the 'Tenant of Necessity must 'make Answer, if it be de'manded of him, then he 'shall be compelled to make 'further Answer, and to shew 'his Right according to the 'Form of the Writ that he 'purchased before against the 'Husband and the Wife. And 'if he can verify that he hath 'Right in the Land demanded, 'the Woman shall gain no'thing by her Writ; which 'thing if he cannot shew, the 'Woman shall recover the 'Land in Demand; this being 'observed, that if the Husband 'absent himself, and will not 'defend his Wife's Right, or 'against his Wife's Consent 'will render the Land, if the 'Wife do come before Judge'ment, ready to answer the 'Demandant, and to defend 'her Right, the Wife shall be 'admitted. Likewise if Ten'ant in Dower, Tenant by the 'Law of the Land, or other'wise for Term of Life, or by 'Gift, where the Reversion is 'reversed, do make default, 'or will give up; the Heirs, 'and they unto whom the Re'version belongeth, shall be 'admitted to their Answer if 'they come before Judgement; 'and if upon Default, or Sur'render, Judgement hap to be 'given, then the Heirs, or 'they unto whom the Rever'sion belongeth after the Death 'of such Tenants, shall have 'their Recovery by a Writ

No. 32.
13 Edward I. c. 3.

When the Writ shall be received upon the Husband's Default.

The Receipt of him in the Reversion.

*Ex Rot. in Turr.* Lond.

No. 32. 13 Edward I. c. 3.

'of Entry, in which like Process shall he observed as is aforesaid, in case where the Husband loseth his Wife's Land by Default. And so in the Cases aforesaid two Actions do concur, one between the Demandant and Tenant, and another between the Tenant shewing his Right, and the Demandant.'

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## No. 33.

13 Edward I. st. 1. c. 4.—Where the Wife shall be endowable of Lands recovered against her Husband. Where the Heir may avoid a Dower recovered. A Remedy for particular Tenants losing by Default

No. 33. 13 Edward I. c. 4.

The Wife shall be endowable, though the Land be recovered against her Husband by Covin, or by Default.

'IN case where the Husband, being impleaded for Land, giveth up the Land demanded unto his Adversary by Covin; after the Death of the Husband, the Justices shall award the Wife her Dower, if it be demanded by Writ. But in case where the Husband loseth the Land in Demand by Default, if the Wife after the Death of her Husband, demandeth her Dower, it hath been proved, that some Justices have awarded unto the Woman her Dower notwithstanding the Default which her Husband made, other Justices being of the contrary Opinion, and judging otherwise. To the Intent that from henceforth such Ambiguity shall be taken away, it is thus ordained in certain, that in both Cases the Woman demanding her Dower shall be heard. And if it be alledged against her, that her Husband lost the Land, whereof the Dower is demanded by Judg-

IN casu quando vir implacitatus de tenemento reddit tenementum petitum suo adversario de plano post mortem viri Justiciarii adjudicant mulieri dotem suam si per breve queratur. Set in casu quando vir amittit tenementum petitum per defaltam si mulier post mortem viri sui petat dotem compertum est quod per aliquos Justiciarios adjudicata fuerit dos mulieri petenti non obstante defalta quam vir suis fecit aliis Justiciariis in contraria opinione existentibus & contrarium judicantibus. Ut de cetero amputetur hujusmodi ambiguitas sic in certo ordinatum est quod in utroque casu audiatur mulier que dotem petit. Et si excipiatur contra ipsam quod vir ipsum tenementum unde dos petita est amisit per judicium per quod dotem habere non debet Et si queratur per quod judicium & compertum fuerit quod per defaltam ad quod tenens necesse habet respondere tunc oportet tenentem ulterius respondere &

*Ex Rot. in Turr.* Lond.

ostendere quod ipse tenens jus habuit & habet in predicto tenemento secundum formam brevis quod prius super virum impetravit. Et si ostendere poterit quod vir mulieris non habuit jus in tenemento nec aliquis alius quam ipse qui tenet recedat quietus & uxor nichil capiat de dote quod si ostendere non poterit recuperet mulier dotem suam. Et sic in casibus istis & in quibusdam casibus subsequentibus scilicet quando uxor dotata amittit dotem per defaltam & tenentes in maritagium per Legem Anglie vel ad terminum vite vel per feodum talliatum concurrunt plures actiones quia hujusmodi tenentes cum oporteat eos petere tenementa sua per defaltam amissa & ad hoc perventum fuerit quod tenens necesse habet ostendere jus suum non possunt ipsi sine hiis ad quos spectat reversio de jure respondere Et ideo conceditur eis quod vocent ad warrantum ac si essent tenentes si warrantum habeant. Et cum warrantus warrantizaverit procedat placitum inter illum qui seisitus est & warrantum secundum tenorem brevis quod tenens prius impetravit & per quod recuperavit per defaltam & sic ex pluribus actionibus ad ultimam perveniatur ad unum judicium vicelicet ad hoc quod hujusmodi petentes recuperent petitionem suam vel quod tenentes eant quieti. Et si actio hujusmodi tenentis qui necesse habet ostendere jus suum mota fuerit per breve de Recto licet magna assisa vel duellum jungi non possit per verba consueta jungi tamen possunt per verba satis apta Quia cum tenens in hoc quod

No. 33.
13 Edward I. c. 4.

'ment, whereby she ought not 'to have Dower, and then it 'be inquired by what Judgement, and it be found that 'it was by Default, whereunto 'the Tenant must answer; 'then it behoveth the Tenant 'to answer further, and to 'shew that he had Right, and 'hath in the foresaid Land, 'according to the Form of the 'Writ that the Tenant before 'purchased against the Husband. And if he can shew 'that the Husband of such Wife 'had no Right in the Lands 'nor any other but he that 'holdeth them, the Tenant 'shall go quit, and the Wife 'shall recover nothing of her 'Dower; which Thing if he 'cannot shew, the Wife shall 'recover her Dower. And so 'in these Cases, and in certain 'other following, that is to say, 'When the Wife being endowed loseth her Dower by 'Default, and Tenants in free 'Marriage, by the Law of '*England*, or for Term of Life 'or in Feetail, divers Actions 'do concur for such Tenants, 'when they must demand their 'Land lost by Default: And 'when it is come to that Point, 'that the Tenants must be 'compelled to shew their 'Right, they cannot make answer without them to whom 'the Reversion of Right belongeth; therefore it is granted unto them to vouch to 'Warranty, as if they were 'Tenants, if they have a Warranty. And when the Warrantor hath warranted, the 'Plea shall pass between him 'that is seised and the Warrantor, according to the Tenor of the Writ that the Tenant 'purchased before, and by

A Remedy for Tenants for Life, &c. which do lose the Land by Default.

The particular Tenants may vouch him in the Rever-

No. 33. 13 Edward I. c. 4.

'which he recovered by Default; and so from many Actions at length they shall resort to one Judgement, which is this, That the Demandants shall recover their Demand, or the Tenants shall go quit. And if the Action of such a Tenant, which is compelled to shew his Right, be moved by a Writ of Right, though that the great Assise or Battail cannot be joined by the Words accustomed, yet it shall be joined by Words convenient; for when the Tenant, in that he sheweth his Right which belongeth to him by the Writ that he before purchased, instead of a Demandant, the Warrantor may well defend the Right of the Tenant, which is accounted in Place of the Demandant, as before is said, and offer to defend the Seisin of his Ancestors by the Body of his Freeman, or put himself in the great Assise, and pray Recognizance to be made, whether he hath more Right to the Land in demand, or else the Party before-named. Or otherwise the great Assise may be joined thus, *Talis defendit jus, &c.* and so the Warrantor may defend the Right, and knowledge the Seisin of his Ancestor, and put himself in the great Assise, *&c.* and pray Recognizance to be made whether he hath more Right in the foresaid Land, as in that whereof he infeoffed such a Man, or that such a one released and quit claimed, *&c.* or else the foresaid Party, *&c.* And where sometime it chanceth that a Woman not hav-

*Ex Rot. in Turr.* Lond.

ostendit jus suum quod ei competit per breve quod prius impetravit sit loco actoris bene poterit warrantus defendere jus tenentis qui loco petentis ut dictum est habetur & seisinam antecessoris sui offerre defendere per corpus liberi hominis sui vel ponere se in magnam assizam & petere recognitionem fieri utrum ipse majus jus habeat in tenemento petito an predictus talis. Vel alio modo jungi poterit magna assisa sic *Talis defendit jus, &c.* & cognoscit seisinam antecessoris sui & ponit se in magnam assisam, &c. & petit recognitionem fieri utrum ipse majus jus habeat in predicto tenemento ut in illo de quo feoffavit talem vel quod talis remisit & quietum clamavit, &c. an predictus talis. Cum aliquando contingat quod mulier non habens jus petendi dotem herede alicujus infra etatem existente impetret breve de dote super custodem & custos per favorem mulieris dotem reddiderit vel defaltam fecerit vel placitum ita ficte per collusionem defenderit per quod dos hujusmodi mulieri in prejudicium heredis adjudicata fuerit provisum est quod heres cum ad etatem pervenerit habeat actionem petendi seisinam antecessoris sui versus hujusmodi mulierem qualem haberet versus alium quemcumque deforciatorem Ita tamen quod salva sit mulieri versus petentem exceptio ostendere quod jus habet in dote sua quod si ostendere poterit recedat quieta & dotem suam retineat & sit heres in misericordia & amercietur graviter secundum discretionem Justic' sin autem recuperet heres petitionem suam. Eodem modo

*Ex Rot. in Turr.* Lond.

subveniatur mulieri si heres vel alius eam implacitaverit de dote sua si dotem suam per defaltam amiserit in quo casu sua defalta non sit ei ita prejudicialis quin dotem suam si jus habeat recuperare possit & fiat ei tale breve:

'ing Right to demand Dower, 'the Heir being within Age, 'doth purchase a Writ of 'Dower against a Guardian, 'and the Guardian endoweth 'the Woman by Favour, or 'maketh Default, or by Col-'lusion defendeth the Plea so 'faintly, whereby the Woman 'is awarded her Dower in Pre-'judice of the Heir; it is pro-'vided, That the Heir when he 'cometh to full Age, shall have 'an Action to demand the Sei-'sin of his Ancestor against 'such Woman, like as he 'should have against any other 'Deforceor; yet so, that the 'Woman shall have her Ex-'ception saved against the 'Demandant, to shew that she 'had Right to her Dower, 'which if she can shew, she 'shall go quit and retain her 'Dower, and the Heir shall 'be grievously amerced, ac-'cording to the Discretion of 'the Justices; and if not, the 'Heir shall recover his De-'mand, *&c.* In like Manner 'the Woman shall be aided, 'if the Heir or any other do 'implead her for her Dower, 'or if she lose her Dower by 'Default, in which Case the 'Default shall not be so preju-'dicial to her, but that she 'shall recover her Dower, if 'she have Right thereto, and 'she shall have this Writ.

No. 33.
13 Edward I. c. 4.
The Heir avoideth a Woman of her Dower recovered against his Guardian.

A Woman's Dower recovered against her by Default.

*Precipe A. quod juste, &c. reddat tali que fuit uxor talis tantam terram cum pertinentiis in N. quam clamat esse rationabilem dotem suam vel de rationabili dote sua & quam talis ei deforc'.* Et ad istud breve habeat tenens exceptionem suam ad ostendendum quod mulier jus non habet in dote quod si verificare poterit

II. Præcipe A. quod juste, &c. reddat B. quæ fuit uxor F. tantam terram cum pertinentiis in C. quam clamat esse rationabilem dotem suam, vel de rationabili dote sua, & quod prædictus A. ei deforceat, &c. 'And to this Writ the Tenant 'shall have his Exception, to 'shew that she had no Right to 'be endowed; which if he

No. 33.
13 Edward I.
c. 4.

'can verify, he shall go quit; 'if not, the Woman shall recover the Land, whereof she 'was endowed before. And 'whereas before time, if a 'Man had lost his Land by 'Default, he had none other 'Recovery than a Writ of 'Right, which was not maintainable by any that could 'not claim of meer Right, as 'Tenants for Term of Life, in 'free Marriage, or in Tail, in 'which Estates a Reversion is 'reserved; it is provided, 'That from henceforth their 'Default shall not be so prejudicial, but that they may 'recover their Estate by another Writ than by a Writ of 'Right, if they have Right. 'For Land in free Marriage, 'lost by Default, such a Writ 'shall be made:

*Ex Rot. in Turr.* Lond.

recedat quietus alioquin recuperet mulier tenementum quod prius tenuit in dotem. Et cum temporibus retroactis aliquis terram suam amisisset per defaltam non habuit aliud recuperare quam per breve de recto quod eis competere non poterit qui de mero jure loqui non potuerunt veluti tenentes ad terminum vite vel per liberum maritagium vel per feodum talliatum in quibus casibus salvatur reversio provisum est decetero quod eorum defalta non sit eis ita prejudicialis quin statum suum si jus habeant recuperare possint per aliud breve quam per breve de Recto. De maritagio amisso per defaltam fiat tale breve:

Quod ei deforceat for Tenant in Frank-marriage.

Præcipe A. quod juste, &c. reddat B. manerium de D. cum pertinentiis, quod clamat esse jus & maritagium suum, & quod A. ei injuste deforceat.

*Precipe A. quod juste, &c. reddat B. tale manerium de C. cum pertinentiis quod clamat esse jus & maritagium suum & quod A. ei injuste deforc'.*

For Tenant for Life, or in Tail.

'Likewise of Land for Term 'of Life, lost by Default, this 'Writ shall be made:

Eodem modo de tenemento tento ad terminum vite per defaltam amisso fiat breve:

Præcipe A. quod juste, & sine dilatione, &c. reddat B. manerium de D. cum pertinentiis, quod clamat tenere ad terminum vitæ suæ, & quod predictus A. ei deforceat.

*Likewise,*

Quod clamat tenere sibi, & hæredibus de corpore suo legitime procreatis, & quod predictus A. ei deforceat.

*Precipe A. quod juste & sine dilatione reddat B. manerium de C. cum pertinentiis quod clamat esse jus & maritagium suum & quod predictus A. ei injuste deforc' vel, quod clamat tenere ad terminum vite sue, vel, quod clamat tenere sibi & heredibus suis de corpore suo exeuntibus et quod predictus A. ei injuste deforc'.*

## No. 34.

## 13 Edward I. c. 5.—Remedies to Redress Usurpations of Advowsons of Churches, &c.

*Ex Rot. in Turr.* Lond.

CUM de advocationibus ecclesiarum non sint nisi tria brevia originalia videlicet breve de Recto & duo de Possessione scilt. Ultime presentationis & Quare impedit & hucusque usitatum fuerit in regno quod cum aliquis jus non habens presentandi presentaverit ad aliquam ecclesiam cujus presentatus sit admissus ipse qui verus est patronus per nullum aliud breve recuperare poterit advocationem suam quam per breve de Recto quod habet terminari per duellum vel per magnam assisam per quod heredes infra etatem existentes per fraudem & negligentiam custodum heredes etiam sive majores sive minores per negligentiam vel fraudem tenentium in dotem per Legem Anglie vel mulierum tenentium in dotem vel alio modo ad terminum vite vel annorum vel feodum talliatum multotiens exheredationem patiebantur de advocationibus suis vel ad minus quod melius eis fuit ponebantur ad breve de Recto & in casu omnino exheredati fuerunt hucusque statutum est quod hujusmodi presentationes non sint hujusmodi rectis heredibus aut illis ad quos post mortem aliquorum hujusmodi advocationes reverti debent prejudiciales quia quotienscumque aliquis jus non habens tempore hujusmodi custodiarum presentaverit vel tempore tenentium in dotem per Legem Anglie vel alio modo ad terminum vite vel

No. 34. 13 Edward I. c. 5.

Three original Writs of Advowson.

"WHEREAS of Advowsons of Churches there be but Three original "Writs, that is to say, One "Writ of Right, and two of "Possession, which be *Darrien* "*Presentment*, and *Quare impedit*; and hitherto it hath "been used in the Realm, that "when any having no Right "to present, had presented to "any Church, whose Clerk was "admitted, he that was very "Patron could not recover his "Advowson, but only by a "Writ of Right, which should "be tried by Battail or by great "Assise, whereby Heirs within Age, by Fraud, or else "by Negligence of their Wardens, and Heirs both of great "and mean Estate, by Negligence or Fraud of Tenants by "the Courtesie, Women Tenants in Dower, or otherwise, "for Term of Life, or for Years, "or in Fee-tail, were many "Times disherited of their "Advowsons, or at least "(which was the better for "them) were driven to their "Writ of Right, in which "Case hitherto they were "utterly disinherited;" 'it is 'provided, That such Presentments shall not be so prejudicial to the right Heirs, or 'to them unto whom such Advowsons ought to revert after 'the Death of any Persons: 'For as often as any, having 'no Right, doth present during the Time that such 'Heirs are in Ward, or during the Estates of Tenants in

Usurpation of Churches during particular Estates shall not prejudice them in the Reversion.

No. 34. 13 Edward I. c. 5.

'Dower, by the Courtesie, or otherwise for Term of Life, or of Years, or in Tail; at the next Avoidance, when the Heir is come to full Age, or when after the Death of the Tenants before named the Advowson shall revert unto the Heir being of full Age, he shall have such Action by Writ of Advowson Possessorie, as the last Ancestor of such an Heir should have had at the last Avoidance happening in his Time, being of full Age before his Death, or before the Demise was made for Term of Life, or in Fee-tail, as before is said. The same shall be observed in Presentments made unto Churches, being of the Inheritance of Wives, what Time they shall be under the Power of their Husbands, which must be aided by this Estatute by the Remedy aforesaid. Also religious Men, as Bishops, Archdeacons, Parsons of Churches, and other spiritual Men, shall be aided by this Estatute, in case any having no Right to present do present unto Churches belonging to Prelacies, spiritual Dignities, Parsonages, or to Houses of Religion, what Time such Houses, Prelacies, spiritual Dignities, or Parsonages be vacant.

Presentations to Churches of Women during their Coverture.

Churches of religious Persons.

'II. Neither shall this Act be so largely understanden, that such Persons, for whose Remedy this Statute was ordained, shall have the Recovery aforesaid, surmising that Guardians of Heirs, Tenants in Tail, by the Courtesie, Tenants in Dower, for Term of Life, or for Years, or Husbands, faintly have

Judgments given shall not be reversed but by Writ of Error or Attaint.

*Ex Rot. in Turr.* Lond.

annorum vel per feodum talliatum in proxima vacatione postquam heres ad etatem pervenerit vel advocatio post mortem in forma predicta tenentium ad heredem plene etatis existentem revertitur habeat eandem actionem & exceptionem per breve de Advocatione possessorium qualem haberet ultimus antecessor hujusmodi heredis plenam habens etatem in ultima vacatione tempore suo accidente ante mortem suam vel antequam dimissio facta fuerit ad terminum vel ad feodum talliatum ut predictum est. Hoc idem observetur de presentationibus factis ad ecclesias de hereditate uxorum tempore quo fuerunt sub potestate virorum suorum quibus per istud statutum subveniatur per remedium supradictum. Viris etiam religiosis Episcopis Archiepiscopis Rectoribus ecclesiarum & aliis personis ecclesiasticis per istud idem statutum subveniatur Si quis jus presentandi non habens presentaverit ad ecclesias domibus suis prelatie dignitati aut personatui spectantes tempore quo vocaverint prelatie dignatates aut personatus hujusmodi.

Nec tamen ita large intelligatur istud statutum quod persone ad quarum remedium istud statutum est editum habeant recuperare supradictum dicentes quod custodes tenentes in dotem per Legem Anglie vel aliter ad terminum vite vel annorum vel viri ficte defenderunt placitum per ipsos vel contra ipsos motum Quia judi-

*Ex Rot. in Turr.* Lond.

cia in curia Regis reddita per istud statutum non adnichilentur set stet judicium in suo robore quousque per judicium curie Regis tanquam erroneum si error inveniatur adnulletur vel assisa Ultime presentationis vel Inquisitio per breve Quare impedit si transierit per attinctam vel per certificationem adnulletur que gratis concedatur. Et de cetero una forma placitandi in brevibus Ultime presentationis & Quare impedit inter Justic' observetur quoad hoc is pars rea excipiat de plenitudine ecclesie per suam propriam presentationem non propter plenitudinem illam remaneat loquela dummodo breve infra tempus semestre impetretur quamquam infra tempus semestre presentationem suam recuperare non possit. Et cum aliquando inter plures clamantes advocationem alicujus ecclesie pax fuerit formata inter partes & irrotulata coram Justic' in rotulo vel in fine sub hac forma quod unus primo presentet & in sequente vacatione alius & in tertia tertius et sic de pluribus si plures sint Et cum unus presentaverit et habuerit suam presentationem quam habere debet per formam illius conventionis et in proxima vacatione impediatur ille ad quem sequens spectat presentatio per aliquem qui fuit pars illius conventionis vel loco ejus statutum est quod decetero non habeant hujusmodi impediti necesse perquirere breve Quare impedit set habeat recursum ad rotulum vel ad finem Et si in rotulo vel in fine comperta fuerit predicta pax vel conventio mandetur vicecomiti quod scire faciat parti impedienti

'defended Pleas moved by 'them, or against them: be-'cause the Judgements given 'in the King's Courts shall not 'be adnulled by this Statute, 'the Judgement shall stand in 'his Force, until it be reversed 'in the Court of the King as 'erroneous, if Errour be 'found; or by Assise of *Dar-'rein presentment*, or by En-'quest by a Writ of *Quare im-'pedit*, if it be passed, or be 'adnulled by Attaint, or Cer-'tification, which shall be 'freely granted. And from 'henceforth one Form of 'Pleading shall be observed 'among Justices in Writs of '*Darrein Presentment* and '*Quare Impedit*, in this Res-'pect, if the Defendant alledg-'eth Plenarty of the Church 'of his own Presentation, the 'Plea shall not fail by reason 'of the Plenarty; so that the 'Writ be purchased within six 'Months, though he cannot re-'cover his Presentation with-'in the six Months. And 'sometimes when an Agree-'ment is made between many 'claiming one Advowson, and 'inrolled before the Justices in 'the Roll, or by Fine, in this 'Form that one shall present 'the first Time, and at the 'next Avoidance another, and 'the third Time another; and 'so of many, in case there be 'many. And when one hath 'presented, and had his Pre-'sentation, which he ought to 'have according to the Form 'of their Agreement and Fine, 'and at the next Avoidance he 'to whom the second Presen-'tation belongeth, is disturbed 'by any that was Party to the 'said Fine, or by some other 'in his Stead; it is provided,

No. 34. 13 Edward I. c. 5.

The Defendant pleadeth Plenarty of his own Presentation.

Presentations to a Church by Composition.

No. 34.
13 Edward I. c. 5.

That from henceforth they that be so disturbed shall have no need to sue a *Quare impedit*, but shall resort to the Roll or Fine; and if the said Concord or Agreement be found in the Roll or Fine, then the Sheriff shall be commanded, that he give Knowledge unto the Disturber, that he be ready at some short Day, containing the Space of fifteen Days, or three Weeks (as the Place happeneth to be near or far) for to shew if he can alledge any Thing, wherefore the Party that is disturbed ought not to present: And if he come not, or peradventure doth come, and can alledge nothing to bar the Party of his Presentation, by reason of any Deed made or written* since the Fine was made or inrolled, he shall recover his Presentation with his Damages. And where it chanceth that after the Death of the Ancestor of him that presented his Clerk unto a Church, the same Advowson is assigned in Dower to any Woman, or to Tenant by the Curtesie, which do present, and after the Death of such Tenants the very Heir is disturbed to present when the Church is void, it is provided, That from henceforth it shall be in the Election of the Party disturbed whether he will sue a Writ of *Quare Impedit*, or of *Darrein Presentment*. The same shall be observed in Advowsons demised for Term of Life, or Years, or in Fee-tail.

The Remedy for a Disturbance after a particular Estate ended.

* Any thing done since, &c.

*Ex Rot. in Turr.* Lond.

quod sit ad aliquem brevem diem continentem spatium quindecim dierum vel trium septimanarum secundum quod locus est propinquus vel remotus ostensurus si quid sciat dicere quare sic impeditus talem presentationem suam habere non debeat Et si non venerit vel forte venerit et nichil sciat dicere quare sic impeditus presentationem suam habere non debeat ratione alicujus facti post pacem irrotulatam vel cirographatam recuperet presentationem suam cum dampnis suis. Et cum contingat quod post mortem antecessoris sui qui ad ecclesiam presentaverit assignata fuerit illa advocatio in dotem alicujus mulieris vel teneatur per Legem Anglie et tenentes in dotem [*vel*] per Legem Anglie presentaverint et verus heres post mortem hujusmodi tenentium per Legem Anglie vel in dotem impediatur presentare cum ecclesia vacaverit provisum est quod decetero sit in electione impediti utrum perquirere velit per breve Quare impedit vel Ultime presentationis. Hoc etiam observetur de advocationibus dimissis ad terminum vite vel annorum vel ad feodum talliatum.

Damages in Quare Impedit and Darrein Presentment.

'III. And from henceforth in Writs of *Quare impedit* and *Darrein Presentment*, Damages shall be awar-

Et decetero in brevibus Ultime presentationis & Quare impedit adjudicentur dampna videlicet si tempus semestre

*Ex Rot. in Turr.* Lond.

transierit per impedimentum alicujus ita quod si Episcopus ecclesiam conferat & verus patronus ea vice presentationem suam amittat adjudicentur dampna ad valorem medietatis ecclesie per annum. Et si impeditor nichil habeat unde restituere possit dampna in casu quando Episcopus confert per lapsum temporis puniatur per prisonam duorum annorum Et si advocatio disrationetur infra tempus semestre puniatur tamen impeditor per prisonam dimidii anni.

'ded, that is to wit, If the 'Time of six Months pass by 'the Disturbance of any, so 'that the Bishop do confer to 'the Church, and the very 'Patron loseth his Presentation 'for that Time, Damages shall 'be awarded for two Years 'Value of the Church. And 'if the six Months be not pass'ed, but the Presentment be 'deraigned within the said 'Time, then Damages shall 'be awarded to the Half Year's 'Value of the Church; and if 'the Disturber have not where'of he may recompense Da'mages, in case where the 'Bishop conferreth by Lapse 'of Time, he shall be punish'ed by two Years Imprison'ment; and if the Advowson 'be deraigned within the half 'Year, yet the Disturber shall 'be punished by the Imprison'ment of half a Year.

No. 34. 3 Edward I. c. 5.

Et decetero concedantur brevia de Capellis prebendis vicariis Hospitalibus Abbatiis Prioratibus & aliis domibus que sunt de advocationibus aliquorum que prius concedi non consueverunt. Et cum per breve Indicavit impediatur rector alicujus ecclesie ad petendum decimas in vicina parochia habeat patronus rectoris sic impediti breve ad petendum advocationem decimarum petitarum Et cum disrationaverit procedat postmodum placitum in curia Christianitatis quatenus disrationatum fuerit in curia Regis.

Quare impedit of Prebends, Vicarages, Hospitals, &c.

'IV. And from henceforth Writs shall be granted 'for Chapels, Prebends, Vicar'ages, Hospitals, Abbeys, 'Priories, and other Houses 'which be of the Advowsons 'of other Men, that have not 'been used to be granted be'fore. And when the Parson 'of any Church is disturbed to 'demand Tythes in the next 'Parish by a Writ of *Indicavit*, 'the Patron of the Parson so 'disturbed, shall have a Writ 'to demand the Advowson of 'the Tythes being in demand; 'and when it is deraigned, 'then shall the Plea pass in the 'Court Christian, as far forth 'as it is deraigned in the 'King's Court.

Disturbance by Indicavit.

Cum advocatio descendit participibus licet unus bis presentet & usurpet super coheredem non propter hoc exclu-

'V. When an Advowson 'descendeth unto Parceners, 'though one present twice, 'and usurpeth upon his Coheir,

Usurpation by one Coparcener upon another.

*Ex Rot. in Turr.* Lond.

No. 34. 13 Edward I. c. 5.

'yet he that was negligent 'shall not be clearly barred, 'but another Time shall have 'his Turn to present when it 'falleth.'

sus sit ille in toto qui fuit negligens set alias habeat turnum suum presentandi cum acciderit.

No. 35.

13 Edward I. c. 6.—The Penalty if a Tenant impleaded voucheth, and the Vouchee denieth his Warranty.

No. 36.

13 Edward I. c. 7.—Admeasurement of Dower for the Guardian and the Heir, and the Process therein.

No. 37.

13 Edward I. c. 9.—In what Case the Writ of Mesne is to be pursued.

No. 38.

13 Edward I. c. 14.—The Process in an Action of Waste. A Writ to enquire of Waste.

No. 38. 13 Edward I. c. 14.

"WHEREAS for Waste "done in the Inheritance of any Person, by Guardians, Tenants in Dower, Tenants by the Courtesie of *England*, or otherwise for "Term of Life, or Years, a "Writ of Prohibition of Waste "hath been used to be granted, "by which Writs many were "deceived, thinking that such "as had done the Waste should "not need to answer but only for Waste done after the Prohibition to them direct-

The Process in an Action of Waste.

"ed;" 'our Lord the King, 'to remove from henceforth 'this Error, hath ordained, 'That of all Manner of Waste 'done to the Damage of any 'Person, there shall from

CUM de vasto facto in hereditate alicujus per custodes tenantes in dotem per Legem Anglie vel aliter ad terminum vite consueverit fieri breve de Prohibitione vasti per quod breve multi fuerunt in errore credentes quod illi qui vastum fecerunt non habuerunt necesse respondere nisi tantum de vasto facto post prohibitionem eis directam dominus Rex ut hujusmodi error decetero tollatur statuit quod de vasto quocumque modo ad nocumentum alicujus facto non fiat decetero breve de Prohibitione set breve de Summonitione ita quod ille de quo queritur respondeat de vasto facto quocumque tempore Et si post summo-

*Ex Rot. in Turr.* Lond.

nitionem nonvenerit attachietur & post attachiamentum distringatur Et post districtionem si non venerit mandetur vicecomiti quod in propria persona assumptis secum duodecim &c. accedat ad locum vastatum & inquirat de vasto facto & retornet inquisitionem & postquam retornata fuerit inquisitio procedatur ad judicium secundum quod continetur in statuto prius edito apud Westmon.'.

'henceforth be no Writ of Prohibition awarded, but a Writ of Summons, so that he of whom Complaint is shall answer for Waste done at any Time; and if he come not after the Summons, he shall be attached, and after the Attachment he shall be distrained; and if he come not after the Distress, the Sheriff shall be commanded that in proper Person he shall take with him twelve, &c. and shall go to the Place wasted, and shall enquire of the Waste done, and shall return an Inquest, and after the Inquest returned, they shall pass unto Judgement, like as it is contained in the Statute of *Gloucester*.'

No. 38. 13 Edward I. c. 14.

A Writ to enquire of Waste.

No. 39.

13 Edward I. c. 17.—In what Case Essoin *De màlo lecti* doth lie, and where not.

No. 40.

13 Edward I. c. 20.—The Tenant's Answer in a Writ of *Cosinage, Aiel* and *Besaiel*.

No. 41.

13 Edward I. c. 21.—A *Cessavit* by the chief Lord against his Freehold Tenant.

No. 42.

13 Edward I. c. 22.—Waste maintainable by one Tenant in common against another.

[Inserted Pt. II. Cl. 4. No. 1.]

No. 43.

13 Edward I. c. 24.—A Writ of Nusance of a House, &c. levied and aliened to another. A *Quod permittat* and *Juris utrum* for a Parson of a Church. In like Cases like Writs be grantable.

[Inserted Pt. IV. Cl. 3. No. 3.]

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No. 44.

13 Edward I. c. 25.—Of what Things an Assise shall lie. Certificate of Assise. Attachment in an Assise.

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No. 45.

13 Edward I. c. 26.—Who may bring a Writ of Redisseisin, and the Punishment of the Offender therein.

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No. 46.

13 Edward I. c. 27.—Essoin after Inquest, but none after Day given *Prece Partium.*

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No. 47.

13 Edward I. c. 28.—In certain Actions, after Appearance there shall be no Essoin.

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No. 48.

13 Edward I. c. 32.—Mortmain by Recovery of Land by Default.

[Inserted Pt. II. Cl. 5. No. 3.]

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No. 49.

13 Edward I. c. 35.—In what Cases do lie a Writ of Ravishment of Ward, *Communi Custodia, Ejectione, &c.*

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No. 50.

13 Edward I. c. 40.—A Woman's Suit shall not be deferred by the Minority of the Heir.

## No. 51.

### 13 Edward I. c. 48.—In what Cases the View of Land is grantable, and what not.

*Ex Rot. in Turr.* Lond.

De visu terre ordinatum est & statutum quod decetero non concedatur visus nisi in casu quando visus terre est necessarius sicuti si aliquis amittat tenementum per defaltam & ille qui amisit suscitet aliud breve ad petendum idem tenementum. Et in casu quando quis per aliquam exceptionem dilatoriam cassat breve post visum terre sicut per non tenuram vel male nominando villam vel hujusmodi si suscitet aliud breve in hoc casu & superiori decetero non concedatur visus terre dummodo habuerit in prioribus brevibus. In brevi de dote cum petitur dos de tenemento quod vir uxor' alienavit tenenti vel ejus antecessori cum ignorare non debeat tenens quale tenementum vir uxoris alienavit sibi vel antecessori suo licet vir non obierit seisitus nichilominus tenenti decetero non erit visus concedendus. In brevi etiam de ingressu cassato per hoc quod petens male nominavit ingressum si petens suscitet aliud breve de aliquo Ingressu si tenens in priori brevi habuit visum in secundo non habebit. In omnibus etiam brevibus per que tenementa petuntur ratione dimissionis quam petens vel ejus antecessor fecit tenenti & non antecessori sicuti quod ei dimisit dum fuit infra etatem non compos mentis in prisona & similibus non jaceat decetero visus sed si dimissio facta fuerit antecessori jaceat decetero visus sicut prius.

'For View of Land it is ordained and provided, 'That from henceforth View 'shall not be granted but in 'case when View of Land is 'necessary: As if one lose 'Land by Default, and he 'that loseth, moveth a Writ 'to demand the same Land. 'And in case when one by an 'Exception dilatory abateth a 'Writ after the View of the 'Land, as by Non-tenure, or 'misnaming of the Town, or 'such like, if he purchase 'another Writ, in this Case, 'and in the Case before 'mentioned, from henceforth 'the View shall not be granted, if he had View in the 'first Writs. In a Writ of 'Dower, where the Dower in 'Demand is of Land that the 'Husband aliened to the Te'nant or his Ancestors, where 'the Tenant ought not to 'be ignorant what Land the 'Husband did aliene to him 'or his Ancestor, though the 'Husband died not seised, yet 'from henceforth View shall 'not be granted to the Tenant. 'In a Writ of Entre also, that 'is abated because the Deman'dant misnamed the Entry, if 'the Demandant purchase 'another Writ of Entre, if the 'Tenant had View in the 'first Writ, he shall not have 'it in the second. In all Writs 'also where Lands be demand'ed by reason of a Lease made 'by the Demandant, or his 'Ancestor, unto the Tenant, 'and not to his Ancestor, as 'that which he leased to him,

No. 51. 13 Edward I. c. 48.

*Ex Rot. in Turr.* Lond.

No. 51. 13 Edward c. 48.

'being within Age, not whole 'of Mind, being in Prison, 'and such like, View shall 'not be granted hereafter; 'but if the Demise were made 'to his Ancestor, the View 'shall lie as it hath done 'before.'

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## No. 52.

### 20 Edward I. stat. 1.—In a Plea of Land the Tenant voucheth, and the Demandant counterpleadeth.

No. 52. 20 Edward I. stat. 1.

Voucher.

"WHEREAS the Tenant "impleaded in a Plea "of Land or Tenement here-"tofore had vouched to War-"ranty, and thereupon the "Demandant would aver, that "neither he that is vouch-"ed, nor any of his Ances-"tors (since the Time that the "Ancestor of the Demandant "was seised) was in Posses-"sion of the said Lands, nei-"ther in Demean nor in Ser-"vice, if the Party vouched 'were present, and would war-"rantise the Land freely unto the Tenant, such Averment of the Demandant hath not been used to be admitted, "unless the Party vouched had "been absent, and that by "reason of a certain Statute of the King lately made "amongst other Statutes of "*West.* 1.

Vouched.

3 Ed. I. c. 40.

"II. Wherefore our Lord "the King, considering the "Fraud, Deceit, and Malice, "and also his own Damage, "and Disherison of his Crown, "that in the said Case hath "many Times happened in "this Court, and daily doth, "whereas some holding of the "King in chief by a whole "Barony, in a Plea hanging

In Plea of Land, the Tenant voucheth one present, and the Demandant counterpleadeth the Voucher.

Cotton *MS. Vespasian* B. 7.

CUM tenens in placito terre vel ten' temporibus retroactis vocaverit aliquem ad Warrantum & petens super hoc verificare voluerit quod nec vocatus nec aliquis antecessorum suorum a tempore seisine antecess. ipsius petentis fuerit in seisina de tenementis predictis nec in dominico nec in servitio si ille vocatus ad Warrantum presens fuerit & gratis tenenti warrantizare voluerit predicta verificatio petentis admitti non consuevit nisi vocatus absens fuerit & hoc ratione cujusdam statuti domini Regis nuper editi inter cetera prima statuta Westm'.

Propter quod dominus Rex animadvertens fraudem deceptionem & malitiam & etiam dampnum suum & exhereditationem corone sue in casu predicto in Curia sua multotiens posse intervenire & isto die intervenerit, cum quidam tenentes de ipso domino Rege in capite per baroniam integram in quodam placito pen-

Cotton *MS. Vespasian*, B. 7.

No. 52. 20 Edward I. stat. I.

dente coram Justic' de banco vocaverint ad Warrantum de demanda particulariter quosdam garcones ignotos & extraneos quos presentes duxerint & quorum antecessores aut ipsimet nunquam in terris que warrantizaverint aliquod jus habuerint aut in aliquibus terris aut tenementis aliis in regno suo neque in dominico neque in servicio prout a diversis domini Regis fidelibus testatur ut per cautelam illam fraudem & maliciam ipsi per baroniam tenentes auferre possent domino Regi misericordiam suam in quam inciderint si petentes demandam suam recuperarent.

Et similiter cum garcones warrantizaverint videlicet quilibet de portione quam warrantizaverit possunt se defendere per corpus servientis provisi & conducti per ipsos baroniam tenentes & sic super uno brevi de una demanda jam fuerint duo vel tria duella vadieta quod durum esset & exemplum perniciosum tempore futuro pro pauperibus petentibus versus magnates & divites qui se per maliciam predictam defendere voluerint nec petens contra dictos warrantos qui vocati fuerunt verificationem suam in forma predicta habere possent eo quod ipsi vocati presentes fuerint & gratis warrantizaverint; de consilio suo communi statuit & confirmavit, quod de cetero videlicet a festo sancti Hilarii anno regni sui xx° & precepit observari; quod quicumque tenens aliquem vocaverit ad Warrantum & petens in forma predicta verifi-

"before the Justices of the "Bench, upon their Demand "do vouch particularly, base "Persons unknown and Strangers (which they will bring "forth) and of whom neither "they nor their Ancestors had "ever any Thing in the Lands "that they warranted, nor in "any other Lands or Tenements within this Realm, "neither in Demean nor in "Service, as hath been testified by divers of the King's "faithful Subjects; so that by "such Cautel, Fraud, and "Malice, the same Tenants, "holding by an entire Barony, "do defraud the King of the "Amerciament that they "should incur, if the demandant "should recover against them.

"III. And likewise when "such base Persons have "warranted, that is to wit, "every one for his Portion "that he ought to warrant, he "may defend himself by the "Body of his Servant procured "and hired by them that hold "Baronies, and so upon one "Writ and one Demand there "were two or three Wagers of "Battail, the which was hard "and perilous Example for "poor Men in Time coming, "that shall be Demandants "against great and rich Men, "which will defend themselves "by the Malice aforesaid; and "the Demandant cannot have "his Averment against such "Warrantors, when they be "vouched in Form aforesaid, "because they be present, and "will warrantise freely:" 'By 'his Common Council hath 'ordained, and from henceforth, that is to say, from the 'Feast of St. *Hilary*, the 'twentieth Year of his Reign,

Averment.

No. 52.
20 Edward I. stat. 1.

'he hath commanded to be 'observed, that when the Tenant doth vouch any to Warranty, and the Demandant 'will aver in Form before rehearsed, his Averment shall be 'admitted, whether the Party 'vouched be absent or present, 'without any Respect had unto 'his Absence or Presence.'

care voluerit, admittatur ejus verificatio sive vocatus fuerit absens sive presens, nullo habito respectu ad ejus presentiam vel absentiam.

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## No. 53.

20 Edward I. stat. 2.—Tenant for Life committeth Waste, he in the Reversion brought an Action of Waste, and dieth before Judgement, his Heir brought an Action for the same Waste.

No. 53
20 Edward I. stat. 2.
Not a Statute.

"WILLIAM BUTLER, "which is within Age, "and in Ward of our Lord "the King, hath shewed unto "his Highness, that where *Gawin Butler* his Brother (whose Heir he is). had impleaded on *Walter de Hapeton* by the King's Writ, for Waste and Destruction made by him the said *Walter* 'in certain his Lands and 'Tenements, which the same '*Walter* held for Term of his 'Life, of the Inheritance of 'the foresaid *Gawin* in *Wimme* "and *Thirke;* and the foresaid *Gawin*, before he had obtained Judgement, died, after whose Death the foresaid *William* by like Writ impleaded the foresaid *Walter* 'for the Waste and Destruction made by him of long Time. The same *Walter*, before *Gilbert Thornton* and 'his Companions, assigned to 'hear the King's Pleas, came 'in, and said, that he ought 'not to answer to the same

Cotton *MS. Claudius*, D. 2.

WILLELMUS le Botiller qui infra etatem est & in custodia domini Regis monstravit domino Regi quod cum Gawynus le Botiller frater ejus cujus heres ipse est implacitasset Walterum de Hopton' per breve domini Regis de vasto & destruccione factis per ipsum in quibusdam terris & ten' suis que idem Walterus tenuit ad terminum vite sue de hereditate predicti Gawyni in W. & Tirlegh' Et Gawynus antequam judicium executus fuisset obiit post cujus mortem predictus Willelmus per consimile breve predictum Willelmum de predictis vasto & destruccione factis per multum tempus implacitaverit Idem Willelmus coram Gilberto de Thornton' & sociis suis ad Placita ejusdem domini Regis assignatis venit et dixit quod non debet ipso Willelmo de vasto & destruccione factis tempore alieno respondere desicut nichil de hereditate predicta ei defendebat & super

Cotton *MS. Claudius*, D. 2.

hoc petiit judicium Et quia quidem Justic' de reddicione predicti judicii non concordarunt prout quibusdam videbatur quod non esset juri consonum si per predictum breve quod est quoddam breve de transgressione certe persone facta si altera persona commodum aut emendas consequatur quam eadem persona cui & in cujus tempore transgressio facta fuerit Aliis autem Justic' & majori parte totius Anglie de consilio domini Regis in contraria opinione existentibus & per diversas rationes asserentibus quod predictus Willelmus inde audiri deberet & responderi & aliis quandocumque in casibus consimilibus & in casu consimili res permanserunt non emendate & transgressores impuniti quod esset inconveniens.

" *William* for the Waste and " Destruction made in he " Time of another, before the " Right of the said Inheritance " descended unto him, and " thereupon demanded Judgement. And forasmuch as " certain Justices did not agree " in giving of the said Judgement, because it seemed to " some that it should not be " agreeable to the Law, that " any Person should obtain " Advantage and Recompence " by the foresaid Writ, which " is a Writ of Trespass done " to a Person certain, but only " the same Person to whom " and in whose Time the " Trespass was done; other " Justices, with the more Part " of the King's Council, were " in the contrary Opinion, " alledging by divers Reasons, " that the said *William* ought to " be heard and answered unto, " and all other whatsoever " they be, in like Cases or in " like Trespasses: And because " like Matters have remained " not amended, and Trespasses unpunished, which was " inconvenient:"

No. 53. 20 Edward I. stat. 2.

Dominus Rex habito tractatu diligenti in pleno parliamento suo in Crastino Pur' beate Marie Anno regni sui vicesimo de communi consilio statuit & extunc jussit firmiter observari, quod heres in cujuscumque custodia fuerit & tam plene etatis quam infra etatem habeat suum recuperare per breve de vasto in casu predicto & aliis casibus ubi breve illud locum habeat tam de vasto & destruccione factis in terris & ten. de hereditate sua temporibus Antecessorum quam a tempore quo jus & feodum

'II. Wherefore our Lord ' the King, in his full Parliament holden the Day after ' the Feast of the *Purification*, ' in the twentieth Year of his ' Reign, by a general Council ' hath ordained, and from ' henceforth hath commanded ' to be straitly observed, That ' every Heir (in whose Ward ' soever he be, and as well ' within Age as of full Age) ' shall have his Recovery by a ' Writ of Waste in the foresaid ' Case, and also in other where ' the same Writ ought to hold ' Place; and it shall hold Place

No. 53.
20 Edward I. stat. 2.

13 Ed. I. stat 1. c. 14.

'as well for Waste and Destruction made in Lands and Tenements of his own Inheritance, and as well in the Times of his Ancestors, as at any other Time that the Fee and Inheritance descended unto him, and shall be answered unto therefore; and that he shall recover the Tenements wasted, and Damages, as it is ordained in in the Second Statute of *Westminster*, of Damages to be recovered in a Writ of Waste, if the Tenant be convict of Waste. And it is commanded by the King himself unto the same *Gilbert Thornton* and his Companions, that they do proceed in the foresaid Matter, and in otherlike from henceforth, and Judgement shall be given according as the Matter is found. And likewise it is commanded unto the Justices, that they shall cause all the foresaid Things to be straitly observed before them from henceforth.'

Cotton *MS. Claudius*, D. 2.

hereditatis ei descendebant & ei respondeatur & quod recuperet ten' vastata & dampna prout statuitur in ultimo statuto Westm' de dampnis recuperandis si tenens de vasto convincatur Et preceptum est per ipsum dominum Regem Gilberto de Thornton' & sociis suis quod in loquela predicta & consimilibus procedant & secundum quod inveniri contigerit judicium reddant. Et similiter preceptum est aliis Justic' quod hoc idem coram eis de cetero faciant firmiter observari.

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## No. 54.

20 Edward I. stat. 3.—Where a Stranger coming in by a collateral Title, not Party to the Suit, shall be received.

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## No. 55.

28 Edward I. stat. 3. c. 15.—In Summons and Attachments in Plea of Land the Writ shall contain Fifteen Days.

No. 55.
28 Edward I. stat. 3. c. 15.

'IN Summons and Attachments in Plea of Land, the Summons and Attachments from henceforth shall contain the Term of Fifteen

*Ex Rot. in Turr.* Lond.

EN somonses e en attachementz en plai de terre desorémes contiegne la somonse e latachement le terme de xv. jours a tot le meins solonc

*Ex Rot. in Turr.* Lond.

la commune lei sil ne seit en attachement des assises prendre en presence le Roi ou des ples devant Justices en eire durant leire.

' Days full at the least according to the common Law, if it be not in Attachment of Assises taken in the King's Presence, or of Pleas before Justices in Eyre, during the Eyre.' No. 55. 28 Edward I. stat. 3. c. 15.

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## No. 56.

34 Edward I. stat. 1.—Jointenancy pleaded in Abatement of a Writ, &c.

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## No. 57.

12 Edward II. c. 1.—Tenants in Assise of *Novel disseisin* may make Atturnies.

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## No. 58.

12 Edward II. stat. 2.— Several Cases wherein Essoins do not lie.

Cotton *MS. Claudius*, D. 2.

DEMONSTRATUR quot modis essonia sunt calumpnianda & in quibus essonia jacent & in quibus non. Non jacet quia terra capta est in manum domini Regis. Non jacet quando aliquis districtus est per terras & catalla. Non jacet quia concessum est hinc inde judicium. Nec jacet de ultra mare quia alias se essoniavit de malo veniendi. Nec jacet quia se essoniavit tali die. Nec jacet quia preceptum fuit vicecomiti quod faceret ipsum venire. Non jacet de servitio domini Regis pro femina nisi quia nutrix aut obstetrix aut mittatur per breve ad ventrem inspiciendum. Non jacet quia querens non invenit plegios de prosequendo. Non jacet quia essoniatus testatur quod non est in servitio

' HERE is declared how many Ways Essoins may be challenged, and in what Cases Essoins do lie, and in what not; that is to say, an Essoin lieth not where the Land is taken into the King's Hands. Essoin lieth not where the Party is distrained by his Land and Chattels. Essoin lyeth not where any Judgment is given thereupon. Essoin of *Ultra Mare* lieth not where another Time the Party hath been essoined *De malo veniendi*. It lieth not where the Party hath essoined himself another Day. It lieth not where the Sheriff was commanded to make the Party to appear. Essoin *De servitio Regis* lieth not where the Party is a Woman, unless because she be Nurse, a Mid- No. 58. 12 Edward II. stat. 2.

No. 58. 12 Edward II. stat. 2.

'wife, or commanded by Writ '*ad ventrem inspiciendum.* It 'lieth not for that the Plaintiff 'hath not found Pledges to 'prosecute the Suit. It lieth 'not where the Party hath an 'Attorney in his Suit. It lieth 'not where the Essoigner con-'fesseth that he is not in our 'Lord the King's Service. It 'lieth not where the Summons is 'not returned, or the Party not 'attached, for that the Sheriff 'hath returned *non est inventus.* 'It lieth not where the Party 'another Time was essoined, '*de servitio Regis,* that is to 'wit, such a Day, and now he 'hath not put in his Warrant. '† *It lieth not where he was re-'summoned in Assise of Mort-'dauncester, or Darrein Pre-'sentment.* It lieth not* be-'cause such a one is not named 'in the Writ. It lieth not 'where the Sheriff hath a Pre-'cept to distrain the Party to 'come by his Lands and 'Goods to attach him. It 'lieth not where the Bishop 'was commanded to cause the 'Party to appear. It lieth not 'for that the Term is passed. 'And it is to be noted, that an 'Essoin *de servitio Domini 'Regis* is allowed after the '*Grand Cape, Petty Cape,* and 'after Distresses taken upon 'the Lands and Goods.'

† Note, The Order is transposed in the Translation.

Cotton *MS. Claudius,* D. 2.

domini Regis. Non jacet quia nulla summonitio testificata vel attachiata vel est quia vicecomes mandavit quod non est inventus. Non jacet quia alias se essoniavit de servitio domini Regis scilicet tali die & modo & non misit Warrantum suum. Non jacet quia mandatum fuit Episcopo quod faceret eum venire. Non jacet quia non nominatur in brevi. Non jacet *quia resummonitio fuit de ultima presentatione vel morte antecessoris. Non jacet quia preceptum est vicecomiti quod attachiet eum. Non jacet quia nondum dies preteriit.

Et sciendum quod essonium de servitio domini Regis scilicet post magnum cape & post parvum cape & post districtionem per terras & catalla jacet.

No. 59.

2 Edward III. c. 17.—A Writ of Deceit shall be maintainable in Case of Garnishment in Plea of Land.

No. 60.

9 Edward III. c. 2.—No Man shall lose Land because of *Nonplevin.*

## No. 61.

### 14 Edward III. c. 17. — A *Juris utrum* maintainable for a Parson or Vicar.

*Ex Rot. in Turr.* Lond.

ITEM cest assentuz & establi qe vikeres parsones & gardeins de chapeles & provosts gardeins & chapelleins des chaunteries perpetueles eient lour brief de Utrum des terres tenementz rentez & possessiones annexes ou donez perpetuelement en almoigne as vikeries chapeles ou chaunteries & recoverir par autres briefs en lour cas auxi avant come parsones des eglises ou provendres.

ITEM it is assented and established, That Parsons, Vicars, Wardens of Chapels, and Provosts, Wardens and Priests of perpetual Chaunteries, shall have their Writs of *Juris utrum* of Lands and Tenements, Rents, and Possessions annexed, or given perpetually in Alms to Vicarages, Chapels, or Chaunteries, and recover by other Writs in their Case as far forth as Parsons of Churches or Prebends.' No. 61. 14 Edward III. c. 17.

## No. 62.

### 14 Edward III. c. 18. — If the Tenant will vouch to Warranty a dead Man, the Demandant may aver that he is dead.

## No. 63.

### 25 Edward III. stat. 3. c. 7. — The Ordinary may counterplead the King's Title for a Benefice fallen by Lapse.

ITEM pur ce qe plusurs presentementz as diverses benefices de seinte eglise si bien de patronage de laiez gentz come de gentz de seinte eglise qestoient voides par sys mois dount les collations de tieux benefices par laps de temps estoient devolutz & de droit appurtenantz a les Ordinaries des lieux estoient recoverez par le Roi par juggement ent rendu de lassent des ditz patrons en deceit de les collations ensi faites resonablement par les ditz Ordinaries en queux plées a eux defendre &

"ITEM, Because that many "Presentments to divers "Benefices of holy Church, "as well of the Patronage of "Lay People, as of People "of holy Church, which were "void by six months, whereof "the Collation of such Benefices by Lapse of Time was "devolute, and of Right pertaining to the Ordinaries of "the Places, were recovered "by the King by Judgments "thereof given of the Assent "of the said Patrons, in Deceit "of the said Collations so "made reasonably by the said No. 63. 25 Edward III. stat. 3. c. 7.

No. 63. 25 Edward III. stat. 3. c. 7.

"Ordinaries; in which Pleas "the Ordinaries nor their "Clerks, to whom they did "give such Benefices, were "not received to shew nor "defend their Right in this "Behalf, nor to counterplead "the King's Right so claimed, "which is not reasonable:" 'Wherefore the King, by the 'Assent of the said Parlia- 'ment, will and granteth for 'him and his Heirs, That when 'Archbishops, Bishops, or other 'Ordinaries, have given a Be- 'nefice of Right devolute to 'him by Lapse of Time, and 'after the King presenteth and 'taketh the Suit against the 'Patron, which percase will 'suffer that the King shall re- 'cover without Action tried, 'in deceit of the Ordinary, 'or the Possessor of the said 'Benefices, that in such 'Case, and all other Ca- 'ses like, where the King's 'Right is not tried, the Arch- 'bishop or Bishop, Ordinary or 'Possessor, shall be received 'to counterplead the Title ta- 'ken for the King, and to have 'his Answer, and to shew and 'defend his Right upon the 'Matter, although that he claim 'nothing in the Patronage in 'the Case aforesaid.'

*Ex Rot. in Turr.* Lond.

contrepleder le droit le Roi ensi clamee les Ordinaries ne lours clercs as queux ils donoient tieux benefices nestoient receuz a monstrer ou defendre lour droit en celle partie la quele chose nestoit mie resonable par quoi le Roi de lassent de son dit parlement voet & grant pur lui & pur ses heirs qe quant Ecervesque Evesque ou autre Ordinarie ad done un benefice de droit a lui devolut par laps de temps & apres le Roi presente & preigne sa seute devers lun patron qi par cas voet soefrir qe le Roi recouvre saunz action trie en deceit de Lordinair ou le possessour des ditz benefices qe en tieu cas & en toutes autres cases semblables ou le droit le Roi nest pas trie Lercevesque Evesque Ordinar ou le possessour soient receuz a contrepleder le title pris pur le Roi & davoir son respons & a monstrer & defendre son droit sur la matire tout soit il qe il riens cleime el patronage en cas susdit.

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## No. 64.

25 Edward III. stat. 5. c. 16.—The Exception of Nontenure of Parcel shall not abate the whole Writ.

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## No. 65.

1 Richard II. c. 9.—A Feoffment of Lands or Gift of Goods for Maintenance shall be void. An Assise is maintainable against the Pernor of the Profits of Lands.

## No. 66.

### 7 Richard II. c. 10.—Where an Assise shall be taken of Rents, issuing forth of Lands, in divers Counties.

*Ex Rot. in Turr.* Lond.

No. 66. 7 Richard II. c. 10.

ITEM est ordeignez & assentuz qassise de novele disseisine soit desore grante & fait de rent aderiere due des tenementz esteantz es diverses countees a tenir en la confyne des countees deinz queux les tenements sont & sur ce lassise prise & trie par gentz des ditz countees en mesme la manere come est fait du commune de pasture esteantz en un countee & appendante as tenementz en autre countee & ce auxi avant des disseisines faites devant ceste heure come de disseisines unqore affaires & qe briefs sur ceo a la pursuyte des pleintifs soient desore faitz en la Chauncellarie sanz nulle manere de contradiction en due forme.

'ITEM it is ordained and 'assented, That an Assise 'of *Novel disseisin* shall be 'from henceforth granted and 'made of Rent behind due of 'Tenements being in divers 'Counties, to be holden in the 'Confine of the Counties, 'within which the Tenements 'be; and thereupon the Assise 'taken and tried by People of 'the said Counties in the same 'Manner as is done of a Com'mon of Pasture being in one 'County, and appendant to 'Tenements in another Coun'ty; and that as well of Dissei'sins done in Times past, as 'of Disseisins yet to be done; 'and that Writs thereupon at 'the Suit of the Plaintiffs be 'made from henceforth in the 'Chancery without any Man'ner of Contradiction, in a 'due Form.'

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## No. 67.

### 13 Richard II. c. 17.—Where he in the Reversion may be received in a Suit commenced against the particular Tenant.

No. 67. 13 Richard II. c. 17.

ITEM pur ce quant tenantz a terme de vie tenantz en dowere ou par la ley dEngleterre ou en la taill apres possibilite dissue exteint soient empledez sont sovent de covyne de les demandantz qe les tenements demandez envers eux soient recoverez & ne voillent prier en eide ne voucher a garrant ceux en reversion mes pledent en chief tiel plee par ont ils scivent bien qe les tenementz serront perduz en

"ITEM, Because that when "Tenants for Term of "Life, Tenants in Dower, or "by the Law of *England*, or "in Tail after Possibility of "Issue extinct, be impleaded, "they be often of the Covin of "the Demandants, that the "Tenements demanded against "them shall be recovered, and "they will not pray in Aid, "nor vouch to Warranty them "in the Reversion, but plead "in chief such a Plea whereby

No. 67.
13 Richard II. c. 17.

"they know well the Tenements shall be lost, in Disherison of them in the Reversion;" 'it is accorded and assented, That if any such Tenant be impleaded, and he in the Reversion come into the Court, and prayeth to be received to defend his Right at the Day that the Tenant pleadeth to the Action, or before, he shall be received to plead in chief to the Action, without taking any Delay by Voucher, Aid Prayer, Nonage, or any other Delay whatsoever, so that after such Receipt he shall have no Manner Delay by Protection, Essoin of the King's Service, common Essoin, nor any other Delay whatsoever, but that the Business shall be hasted in as much as it may be by the Law; and that Days of Grace be given by the Discretion of the Judges between the Demandant and him that is received in such Case, without giving the common Day in Plea of Land, if the Demandant will not assent, to the Intent that the Demandants be not too much delayed, because they must plead with two Adversaries; and in the Right of Pleas that be now depending in such Case, they in the Reversion shall be received in the Manner aforesaid, at the next Day that the Parties have in Court, although the same Parties have pleaded in chief before this Time.

*Ex Rot. in Turr.* Lond.

desheritance de ceux en reversion accordez est qe si ascun tiel tenant soit empledez & celuy en reversion veigne in court & prie destre receu a defendre son droit a jour qe le tenant plede al action ou devant soit receu a pleder en chief al action sanz ascun delay prendre par voucher eide prier nonnage ou autre delay qeconqe issint qe apres tiel receit il neit null manere delaie par protection esson du service le Roi commune esson nautre delay qeconqe mes soit la busoign hastie en tant come pusse estre par ley & qe jours de grace puissent estre donez par discretion des Juges entre le demandant & celuy qest receu en tiel cas sanz doner commune jour en plee de terre si le demandant ne voille assenter au fyn qe les demandantz ne soient trop delaiez par cause qe les covent pleder ove deux adversairs. Et en droit des plees qe sont ore pendantz en tiel cas soient ceux en reversion receuz en manere come devant est dit a prochein jour qe les parties ont en court tout eient mesmes les parties pledez en chief devant ces heures.

He that prayeth to be received, shall find Surety of the Issues of the Land in Demand.

'II. Provided always, That they in the Reversion which pray to be received, as before is said, shall find Surety of the Issues of the Tenements demanded for

Purveu toutfaitz qe ceux en reversion qe prient destre receuz come devant est dit trovent seurete des issues des tenementz demandez par le temps qe mesmes les deman-

*Ex Rot. in Turr.* Lond.

dantz soient delaiez apres le plee termine entre les demandantz & les tenantz si jugement passe pur le demandantz envers ceux en reversion avauntditz sibien la ou la receite soit contreplede come la ou ele soit grante.

'the Time that the same Demandants be delayed, after the said Plea determined between the Demandants and Tenants, if the Judgment pass for the Demandant against them in the Reversion aforesaid, as well where the Receipt is counterpleaded, as where it is granted.'

No. 67. 13 Richard II. c. 17.

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No. 68.

15 Richard II. c. 12.—No Man shall be compelled to answer for his Freehold before the Council of any Lord.

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No. 69.

16 Richard II. c. 2. — The Forfeiture of him that compelleth any Person to answer for his Freehold.

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No. 70.

4 Henry IV. c. 7. — The Disseisee shall have an Assise against the Disseisor taking the Profits.

ITEM come en lestatut fait lan primer le Roy *Richard* second ordeignez estoit qe la ou deverses gentz disseisent autres de lour frank tenement & fount feffement as diverses gentz pur maintenance avoir sibien come pur faire les disseisez avoir mesconisance vers queux eux duissent lour brief prendre qe les disseisez en tiel cas puissent lour brief prendre vers ceux qi ent priegnent les profitz parissint qe les disseisis comencent leurs suites deinz lan proschein apres le disseisyne & qe mesme lordinance tiegne lieu en chescun autre action en plee ou tieux feffementz sont faitz par fraude ou collusion davoir lour recoverer vers tieux feffours si eux

"ITEM, Whereas in the Statute made the first Year of King *Richard* II. it was ordained, That where several Persons did disseise other of their Freehold, and made Foeffinent to divers People, as well to have Maintenance, as also to make the Disseisees to be ignorant, against whom they ought to take their Writ; that the Disseisees in such Case might take their Writ against them which thereof shall take the Profits, so that the Disseisees commence their Suit within the Year next after the Disseisin; and the same Ordinance should hold Place in every other Action or Plea where such

No. 70. 4 Henry IV. c. 7.

1 R. 2. c. 9.

*Ex Rot. in Turr.* Lond.

No. 70.
4 Henry IV. c. 7.

" Foeffments be made by " Fraud or Collusion, to have " their Recovery against such " Foeffers, if they thereof take " the Profits:" ' Our said Lord ' the King thinking the said ' Statute to be very mischievous and prejudicial to his ' People, because of the Shortness of the Time, by the Assent of the said Lords, and ' at the Request of the Commons aforesaid, hath ordained and stablished, That such ' Disseisees shall have their ' Action against the first Disseisor, during the Life of the ' same Disseisor, so that such ' Disseisor thereof take the ' Profits at the Time of the ' Suit commenced. And as to ' other Writs in Plea of Land, ' the Demandant shall commence his Suit within the ' Year against him which is ' Tenant of the Freehold at ' the Time of the Action ' accrued to him, so that such ' Tenant thereof take the Profits at the Time of such Suit ' commenced, notwithstanding ' the said Statute.'

ent priegnent les profitz nostre dit Seignur le Roy entendant le dit estatut estre molt meschevous & damageous a son poeple a cause de briefte de temps de lassent des ditz Seignurs & a la request des communes suisditz ad ordeignez & establiz que tielx disseisiz aient leur action devers le primer disseisour durante la vie mesme la disseisour parensi qe tiel disseisour ent priegne les profitz au temps de la suyte comencee. Et quant as autres briefs en plee de terre comence le demandant sa seute deinz lan devers celuy q'est tenant de frank tenement a temps de laction a luy accrue parensi qe tiel tenant ent priegne lez profitz a temps de tiele seute commence nonobstant lestatut avauntdit.

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## No. 71.

### 4 Henry IV. c. 8.—In what Cases a special Assise is maintainable against a Disseisor with Force.

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## No. 72.

### 4 Henry IV. c. 22. — The Remedy where by the King's Presentation any Incumbent is put forth.

No. 72.
4 Henry IV. c. 22.
25 Ed. 3. st. 3. c. 3.

" ITEM, 'Whereas it is ordained by the Statute " made the twenty-fifth Year " of King *Edward*, Grand-

ITEM come ordeigne soit par estatut fait lan vint & quint le Roy *Edward* Aiel nostre dit Seignur le Roy qe si le

*Ex Rot. in Turr.* Lond.

Roy ferra collation ou presentement a nulle benefice en autri droit qe le title sur qi il se fondera serroit bien examine qil serroit verrai & a quel heure qe avant juggement rendu le title soit trove par bone enformation nient verroi ne joust soit la collation ou presentement ent faitz repellez & anientez. Et enoutre soit ordeigne & establi en estatut fait apres en temps du Roy *Richard* qe si le Roy presente a ascun benefice qi soit plein dascun incumbent qe le presentee le Roy ne soit resceu par lordinaire tanqe le Roy eit recoverez son presentement par proces de ley en sa courte demesne & si ascune presentee du Roy soit autrement resceu & le incumbent ouste sans due proces come desuis est dit commence le dit incumbent sa suyte deinz un an apres la induction de presentee du Roy Nostre Seignur le Roy considerant le grant meschief du dit incumbent celle partie ad ordeignez & establiz de lassent avauntdit qe si aucun tiel incumbent soit oustee de son benefice sanz processe en la manere suisdite qe le dit incumbent issint oustee sanz processe puisse estre a large & suir remedie par le dit estatut & commencer sa dite seute en ce cas a quel temps qe luy plerra deinz lan ou apres a sa voluntee & ce sibien pur temps passe come pur temps advenir nient contresteant le dit terme ensi limite par le dit estatut.

No. 72. 4 Henry IV. c. 22.

"father to our Lord the King, "that if the King make Collation or Presentment to any "Benefice in another's Right, "that the Title whereupon he "groundeth him should be well "examined that it be true; "and at what Time, before "Judgement given, the Title "be found by good Information untrue and unjust, "the Collation or Presentment thereof made, shall be "repealed and adnulled. And "moreover, in a Statute made "after in the Time of King "*Richard*, it was ordained and "established, That if the King "present to any Benefice that "is full of any Incumbent, "that the King's Presentee "shall not be received by the "Ordinary, till the King hath "recovered his Presentment "by Process of the Law in "his own Court; and if any "Presentee of the King be "otherwise received, and the "Incumbent put out without "due Process, as afore is said, "the same Incumbent shall "commence his Suit within a "Year after the Induction of "the Presentee;" 'Our Lord 'the King considering the 'great Mischief of the Incumbent in this Behalf, hath ordained and stablished, by the 'Assent aforesaid, That if any 'such Incumbent be put out of 'his Benefice without due Process in the Manner aforesaid, 'That the said Incumbent so 'put out without Process, may 'be at large, and sue for his 'Remedy by the said Statute, 'and begin his Suit in this 'Case at what Time shall please 'him, within the Year, or 'after, at his Will; and that 'as well for Time past, as

13 R. 2. stat. 1. c. 1.

*Ex Rot. in Turr.* Lond.

No. 72. 4 Henry IV. c. 27.

'for the Time to come, notwithstanding the Term so limited by the said Statute.'

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## No. 73.

2 Henry VI. c. 16.—Persons in the Reversion may sue for their Right to Estates, notwithstanding any Defaults committed by the former Possessors.

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## No. 74.

11 Henry VI. c. 2.—The Penalty where a Sheriff is named a Disseisor in an Assise.

No. 74. [11 Henry VI. c. 2.

"ITEM, Whereas several "Persons do often sue Assises[a] of *Novel disseisin* before Justices assigned against divers Persons, and by Craft 'and Collusion to have their 'Writs of their said Assises 'directed to the Coroners of 'the Counties where their "Tenements be, to make Ex'ecution of the said Writs, 'do name in their said Assi'ses the Sheriff of the same "County one of the Dissei'sors, where he is not, neither 'ever was Disseisor or Ten'ant of the Tenements in 'Demand, whereby often'times the said Assises be 'awarded by Default of 'the Tenants which have 'no Knowledge of those As'sises, for that they found not "any Assise against them in "the File of the Sheriff, nor "have any Suspicion of any such Assise taken against "the Sheriff and them;" 'Our 'Lord the King, willing in 'this Case to provide Remedy, 'of the Assent and Authority 'aforesaid, hath ordained, 'That in all such Assises pur-

ITEM come divers gentz sovent foitz suent assises de novell disseisyn devaunt Justices assignez envers diverses persones & par subtillite & collusion pur avoir lour brefs de lours ditz assises directz as coroners dez countees ou lez tenementz sount pur faire execution dicell brefs fount nomer en lours ditz assises le viscount de mesme le counte une dez disseisoures lou il nest ne unqes fuist disseisour ne tenaunt dez tenementz en demaunde parount sovent foitz lez ditz assises sount agardez par defaute dez tenantz quex nount my conusaunce de ceux assises en tant qils ne trovent my ascune assise envers eux en la felace de viscount & nount ascune suspecion de ascune tiel assise priz envers le viscount & eux Nostre Seignur le Roi voillant en ceo cas purvoir de remedie del assent & auctorite suisditz ad ordeigne qen tous tiels assises purchasez & a present pendantz ou a purchasers desore enavaunt parentre quecorques persones devaunt as-

*Ex Rot. in Turr.* Lond.

No. 74.
11 Henry VI.
c. 2.

cuns tieux Justices en quex assises ascune tiel viscount soit nomez desseisour si lez tenantz en lez ditz assises ou ascun de eux voil averrer qe le dit viscount nest ne unqes fuist disseisour ne tenaunt dez tenements en demaunde mais fuist nome disseisour par collusion soit laverrement receuz. Et si trove soit par la dit assise qe le dit viscount ne soit ne unqes fuit disseisor ne tenaunt dez tenementz en demaunde mais fuist nome disseisour par collusion adonqes les ditz Justices facent abater & casser le dit brief purchase ou purchaser en la fourme suisdit & qe lez pleintifs ou pleintife soient ou soit en le greve mercy le Roi.

'chased, at this Time depending, or hereafter to be purchased, between any Persons whatsoever they be, before any such Justices, in which Assises any such Sheriff is named Disseisor, if the Tenants in the said Assises or any of them will aver, that the said Sheriff is not, nor ever was, Disseisor nor Tenant of the Tenements in Demand, but was named Disseisor by Collusion, the Averment shall be received. And if it be found by the said Assise, that the said Sheriff is not, nor ever was, Disseisor nor Tenant of the Tenements in Demand, but was named Disseisor by Collusion, then the said Justices shall cause to be abated and quashed the said Writ purchased, or to be purchased in the Form abovesaid; and that the Plaintiffs or Plaintiff be in the grievous Mercy of the King.'

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11 Henry VI. c. 3.—An Assise, &c. maintainable against the Pernor of the Profits.

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## No. 75.

11 Henry VI. c. 5.—The Remedy where a Tenant granteth over his Estate, taketh the Profits, and committeth Waste.

No. 76.

1 Henry VII. c. 1.—A *Formedon* maintainable against the Pernor of the Profits of Lands enfeoffed to Use. The Tenant in the same Action shall have Aid Prayer, Voucher, and other Advantages. The Tenant shall have his Age and other Advantages. Recoveries against the Pernors of the Profits, and their Feoffees.

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No. 77.

21 Henry VIII. c. 3.—Plaintiffs in Assize may abridge their Plaints.

No. 78. 21 Henry VIII. c.

'FORASMUCH as Assises, which have been thought the 'most speedy Remedy, be now, by occasion of pleading 'of many Bars to Moieties and Parts of the Lands put in view 'and plaint, greatly delayed by Difficulties and Division of 'Pleading; and one Cause thereof is, because the Plaintiffs in 'every Assise in such Pleas to Moieties and Parties, cannot by 'the Law abridge their Plaints:' For Remedy whereof be it enacted, That the Plaintiff in every Assise from henceforth may at his Pleasure sever and abridge his Plaint, of any Part or Parts whereunto any Bar is pleaded by Moiety, in like Manner as he or they might do in case the Pleas in Bar had been made and divided to any Certainty or Number of Acres in the Plaint; and that the Plaint for the Residue of the Part or Parts of the Lands not abridged, shall be and stand good and effectual in the Law. 'Qua quidem billa perlecta, & ad ple-'num intellecta, per dictum dom' regem ex assensu & aucto-'ritat' parliamenti predicti taliter est responsum.' *Imperfect on the Roll.*

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No. 78.

21 Henry VIII. c. 15.—Fermors shall enjoy their Leases against Recoveries by feigned Titles, &c.

## No. 79.

## 32 Henry VIII. c. 32.—Joint Tenants for Term of Life or Years.

## No. 80.

## 31 Elizabeth, c. 3.—An Act for the avoiding of privy and secret Outlawries of the Queen's Subjects. P.

No. 80. 31 Elizabeth, c 3.

II. AND for the Avoiding of secret Summons in real Actions, without convenient Notice of the Tenants of the Freehold, Be it also ordained and enacted by the Authority of this present Parliament, That after every Summons upon the Land in any Real Action, fourteen Days at the least before the Day of the Return thereof Proclamations of the Summons shall be made on a *Sunday* in Form aforesaid, at or near to the most usual Door of the Churches or Chapel of that Town or Parish, where the Land whereupon the Summons was made doth lie, and that Proclamation so made as aforesaid, shall be returned, together with the Names of the Summoners: And if such Summons shall not be proclaimed and returned according to the Tenor and Meaning of this Act, then no *Grand Cape* to be awarded but *Alias* and *Pluries* Summons, as the Cause shall require, until a Summons and Proclamation shall be duly made and returned according to the Tenor and Meaning of this Act.

A Proclamation shall be of the Summons in a Real Action at the Church Door.

# PART IV. CLASS XIX.

## DISTRESS, REPLEVIN, AND MATTERS RELATING TO LANDLORD AND TENANT.

### No. 1.

51 Henry III. stat. 2. (De Districtione Scaccarii).—What Distress shall be taken for the King's Debts, and how it shall be used.

[Inserted Pt. II. Cl. 12. No. 1.]

### No. 2.

*Statute of Marlebridge*, 52 Henry III. (A.) c. 1.—The Penalty of taking a Distress wrongfully.

No. 2. 52 Henry III. c. 1.

"WHEREAS at the time "of a Commotion "late stirred up within this "Realm, and also sithence, "many great Men, and di-"vers other, refusing to be "justified by the King and his "Court, like as they ought "and were wont in time of "the King's noble Progeni-"tors, and also in his time; "but took great Revenges and "Distresses of their Neigh-"bours, and of other, until "they had Amends and Fines "at their own Pleasure; and "further, some of them would "not be justified by the King's "Officers, nor would suffer "them to make Delivery of "such Distresses as they had

Cotton *MS. Claudius* D. 2.

CUM autem tempore turbationis nuper in regno [*nostro*] suborte, & deinceps, multi Magnates & alii justiciam non dignati [*dedignati*] fuerint recipere per dominum Regem & Curiam suam, prout debuerunt & consueverunt temporibus predecessorum ipsius domini Regis, & eciam tempore suo; sed de vicinis suis & aliis per seipsos graves ultiones fecerunt, & districtiones, quousque redempciones receperint ad voluntatem suam. Et preterea quidam eorum se per Ministros domini Regis justiciari non permittunt, nec sustineant quod per ipsos liberentur districtiones, quas auctoritate propria fecerint ad vo-

Cotton *MS. Claudius*, D. 2.

luntatem suam: Provisum est, & concorditer concessum, quod tam majores, quam minores, justiciam habeant & recipiant in Curia domini Regis; (1.) Et nullus de cetero ultiones aut destrictiones faciat per [*propriam*] voluntatem suam, absque consideracione Curie domini Regis, [*et*] si forte dampnum vel injuria sibi fiat, unde emendas habere voluerit de vicino suo, sive majore vel minore. Super autem articulo supradicto provisum est & concessum, ut si quis de cetero ultionem hujusmodi capiat per voluntatem suam propriam absque consideracione Curie domini Regis, ut predictum est, & inde convincatur, puniatur per redempcionem, et hoc secundum quantitatem delicti. Et similiter si super vicinum suum faciat districcionem sine consideracione Curie Domini Regis, per quod dampnum habeat, puniantur eodem modo, & hoc secundum quantitatem delicti. Et nichilominus fiant emende plene & sufficienter [*sufficientes*] eisdem qui dampnum sustinuerunt per hujusmodi districciones.

" taken of their own Authority:" 'It is provided, agreed, 'and granted, that all Persons, 'as well of high as of low 'Estate, shall receive Justice 'in the King's Court; and 'none from henceforth shall 'take any such Revenge or 'Distress of his own Authority, without Award of our 'Court, though he have Damage or Injury, whereof he 'would have Amends of his 'Neighbour either higher or 'lower. And upon the foresaid Article it is provided and 'granted, that if any from 'henceforth take such Revenges 'of his own Authority, without 'Award of the King's Court, '(as before is said) and be 'convict thereof, he shall be 'punished by Fine, and that 'according to the Trespass. 'And likewise if one Neighbour take a Distress of 'another without Award of 'the King's Court, whereby 'he hath Damage, he shall be 'punished in the same wise, 'and that after the Quantity 'of the Trespass. And nevertheless sufficient and full 'Amends shall be made to 'them that have sustained 'Loss by such Distresses.'

No. 2. 52 Henry III.

The Punishment for an unlawful Distress.

(1) By this Statute it appears that the Plaint, though given for Expedition before the Sheriff, may at any Time be removed and recorded in the Court of the King; Gilb. Distr. 3 Ed. 147. The Delivery of a Recordari, after interlocutory and before final Judgment, is a Stop to all further Proceedings in the County Court; Bevan *v.* Prothesk, 2 Bur. 1151.

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## (B.) C. 2.—None but Suitors shall be distrained to come to a Court.

NULLUS insuper major vel minor distringat aliquem ad veniendum ad Curiam suam, qui non sit de feodo suo, aut super ipsum non habeat jurisdiccionem per Hundre-

'MOREOVER, none (of 'what Estate soever 'he be) shall distrain any to 'come to his Court, which is 'not of his Fee, or upon 'whom he hath no Jurisdiction,

No. 2. 52 Henry III. c. 2.

Cotton *MS.*

No. 2. 52 Henry III. c. 2.

'by Reason of Hundred, or Bailiwick; nor shall take Distresses out of the Fee or Place where he hath Bailiwick or Jurisdiction; And he that offendeth against this Statute shall be punished in like Manner, and that according to the Quantity and Quality of the Trespass.'

dum vel [*per*] Ballivam suam; nec districciones faciat extra feodum suum, seu locum, ubi ballivam habeat, vel jurisdiccionem; & qui contra hoc statutum venerit, puniatur eodem modo, & hoc secundum delicti quantitatem.

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## (C.) C. 3.—A Lord shall not pay a Fine for distraining his Tenant.

No. 2. 52 Henry III. c. 3.

The Punishment for unlawful Distress.

'IF any, of what Estate soever he be, will not suffer such Distress as he hath taken, to be delivered by the King's Officers, after the Law and Custom of the Realm, or will not suffer Summons, Attachments, or Executions of Judgments given in the King's Court, to be done according to the Law and Custom of the Realm, as is aforesaid, he shall be punished in manner aforesaid, as one that will not obey the Law, † *and that according to the Quantity of the Offence.* And if any, of what Estate soever he be, distrain his Tenant for Services and Customs which he alledges to be due unto him, or for any other Thing, for the which the Lord of the Fee hath Cause to distrain, and after it is found that the same Services are not due, the Lord shall not therefore be punished by Fine, as in the Cases aforesaid, if he do suffer the Distresses to be delivered according to the Law and Custom of the Realm; but shall be amerced as hitherto hath been used, and the Tenant shall recover his Damages against him.'

† *The Words in Italicks not in the Original.*

The Lord distraining his Tenant shall not pay a Fine.

SI quis autem major vel minor permittere noluerit liberari per ministros domini Regis, & secundum legem & consuetudinem regni, districciones quas fecerit; aut etiam sustinere noluerit summoniciones & attachiamenta, seu executiones judiciorum Curie domini Regis fieri, puniatur modo predicto, tanquam se justiciari non permittens. Quod si quis major vel minor districciones faciat super tenentem suum pro servitiis & consuetudinibus, que sibi deberi dicat, vel pro re altera, unde ad dominum feodi pertineat facere districciones, & postea convincatur, quod tenens ejus ea sibi non debeat; non ideo puniatur dominus per redemptionem, ut in supradictis casibus, si permittat districciones liberari secundum legem & consuetudinem regni; sed amercietur velut hactenus consuetum est, & tenens dampna sua recuperet versus eum.

## (D.) C. 4. — A Distress shall not be driven out of the County. And it shall be reasonable.

Cotton *MS.*

NULEUS de cetero faciat ducere districciones, quas ceperat, extra Comitatum in quo fuerit; Et si vicinus hoc fecerit super vicinum suum, & per voluntatem suam, & sine judicio, puniatur per redemptionem, ut supra, veluti de re contra pacem. Verumptamen si dominus hoc super tenentem suum fecerit castigetur per gravem misericordiam. Districciones insuper sint rationabiles, & non nimis graves. (1.) Et qui districciones fecerint irrationabiles & indebitas, graviter amercientur propter excessum districcionum ipsarum.

No. 2. 52 Henry III. c. 4.

'NONE from henceforth shall cause any Distress that he hath taken, to be driven out of the County where it was taken; and if one Neighbour do so to another of his own Authority, and without Judgement, he shall make Fine (as above is said) as for a Thing done against the Peace: Nevertheless if a Lord presume so to do against his Tenant, he shall be grievously punished by Amerciament. Moreover, Distresses shall be reasonable, and not too great. And he that taketh great and unreasonable Distresses, shall be grievously amerced for the Excess of such Distresses.' Distresses shall be reasonable.

(1.) An Action of Trespass cannot be maintained for taking an excessive Distress, but the Remedy is by a special Action founded on the Statute; Hutchinson v. Chambers, 1 Bur. 379; Lynne v. Moody, 2 Str. 851: except when the Distress is of Gold or Silver, which are of a certain known Value; Moir v. Munday, cited 1 Bur. 590; and see Crowther v. Rambsbottom, 7 T. R. 651.

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## (E.) C. 15.—In what Places Distresses shall not be taken.

NULLI de cetero liceat districciones facere ex quacunque causa extra feodum suum, nec in regia via, aut communi strata, nisi domino Regi aut Ministris suis.

No. 2. 52 Henry III. c. 15.

'IT shall be lawful (1.) for no Man from henceforth, for any Manner of Cause, to take Distresses (2.) out of his Fee, (3.) nor in the King's Highway, (4.) nor in the common Street, but only to the King or his Officers having special Authority to do the same.'

(1.) The Distress is not void so as to debar the Lord of his Avowry, but the Remedy is by Action; 1 Inst. 131.

(2.) A Lord may seize for a Heriot Custome on the Highway, for that is not a Distress; 1 Inst. 131.

(3.) This is understood of Distresses by reason of Seignory, and not Distresses for Rent Charges; or by reason of a Leet; 1 Inst. 131. The Provision is only in Affirmance of the Common Law; Id. 131.

(4.) If the Lord come to distrain, and see the Beasts within his Fee, and before he can distrain them the Tenant chase them into the Highway, the Lord may, as hath been said, distrain them; 1 Inst. 131.

## (F.) C. 21.—Who may take Replevins of Distresses.

No. 2. 52 Henry III. c. 21.

Who may make Replevin for Beasts distrained

'IT is provided also, That if the Beasts of any Man be taken, and wrongfully withholden, the Sheriff, after Complaint made to him thereof, may deliver them without Let or Gainsaying of him that took the Beasts, if they were taken out of Liberties. And if the Beasts were taken within any Liberties, and the Bailiffs of the Liberty will not deliver them, then the Sheriff, for Default of those Bailiffs, shall cause them to be delivered.'

Cotton *MS.*

PROVISUM est, quod si averia aliqua injuste capiantur, & detineantur, Vicecomes post querimoniam inde sibi factam, (1.) ea sine impedimento vel contradiccione ejus qui dicta averia cepit, deliberare possit, si extra libertates capta fuerint. Si infra libertates capta fuerint, & ballivi libertatis ea liberare noluerint, tunc vicecomes per defaltam eorum [*ipsorum*] ea faciat deliberari.

(1.) This Statute authorizes the Sheriff to grant Replevin upon Plaint out of Court, without Writ, to an unlimited Amount. In Hallett v. B Lord Raym. 218; 2 Salk. 580; Skin. 674; 5 Mod. 248, it was ruled t the Hundred Court could not claim such a Power by Prescription, as eve Hundred Court is only an Emanation of the County Court. But in Wilson Hobday, 4 M. and S. 120, the Court were of Opinion that that Case does r furnish a Rule for Replevins in other Courts, which owe their Origin a Jurisdiction to Charters from the Crown, and in which Pleas of Repl upon Plaint, without Writ, may be maintained.

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## No. 3.

### 3 Edward I. (Westminster first) c. 16.—None shall distrain out of his Fee, nor drive the Distress out of the County.

No. 3. 3 Edward I. c. 16.

"IN right thereof, that some Persons take, and cause to be taken, the Beasts of others; chasing them out of the Shire where the Beasts were taken;' it is provided also, that none from henceforth do so; and if any do, he shall make a grievous Fine, as is contained in the Statute of *Marlebridge*, made in the Time of King *Henry*, Father to the King that now is. And likewise it shall be done to them which take Beasts, and distrain out of their Fee, and shall be more grievously punished, if the Manner of the Trespass do so require.'

A Distress shall not be driven out of the County.

Distraining out of his Fee.

EN droit de ceo qe ascuns gentz pernent & prendre fount les averes des autres, & les chacent hors del Countee ou les averes sont pris; purveu est qe nul desoremes ne le face; & si nul le fait, soit reint grevement solonc ceo qe est contenuz en les *dits* estatutz de Marleberge, faite al temps le Roi *Henry* pier le Roi qoer est: & par mesme la manere soit fait de ceux qui pernent les averes, & qe font destresse en autre fee, & pluis grevement soient puniz, selonc ceo qe le trespas demaunde.

## No. 4.

## 3 Edward I. c. 17. — The Remedy if the Distress be impounded in a Castle or Fortress.

Cotton *MS.*

PERVEU est ensement, qe si nul desoremes preigne les averes des autres, & les face chacer al Chastel ou al forcelette, & illeoqes dedeinz clos del Chastel, ou de la forcelette, les deteigne encountre gage & piegge, puis qe les averes serront solempnement demandez per le Viscounte ou per le Baillif le Roi; a la suite del pleintif, qe le Viscounte ou le Baillif prise ov luy poyer de son Countee, ou de sa baillie, voit assaier de faire le plevin des averes a celuy qe pris les averes, ou a son Seignur, ou as autres des hommes son Seignur qeconques soit trove al leu, ou les averes furont enchacez; & si lem luy deforce la deliveraunce des averes, ou qe ne trove homme pur le Seignur, ou per celui qi les avera pris, quen respoigne & face la deliverance, apres ceo qe le Seignur al pernour, per Viscounte ou per Baillif en serra amonestee, sil est en pais, ou pres, ou qil purra per le pernour, ou per autre des soens covenablement estre garny de faire la deliveraunce, sil fuist hors de cel pois quant la pris fuist fait, & ne face adonqes maintenant les averes deliverer, qe le Roi pur le dispit, & pur le trespas, face abatre le Chastel, ou le forcelette saunz relever; & tout le damage qe le pleintiff avera resceu de ses averes, ou de son gainage destourbe, ou en autre manere, puis le primer demaunde des averes faite per le Viscounte ou per le

'IT is provided also, That if any from henceforth take the Beasts of other, and cause them to be driven into a Castle or Fortress, and there within the Close of such Castle or Fortress do withhold them against Gage and Pledges, whereupon the Beasts be solemnly demanded by the Sheriff, or by some other Bailiff of the King's; at the Suit of the Plaintiff, the Sheriff or Bailiff, taking with him the Power of the Shire or Bailiwick, do assay to make replevin of the Beasts from him that took them, or from his Lord, or from other, being Servants of the Lord (whatsoever they be) that are found in the Place whereunto the Beasts were chased; if any deforce him of the Deliverance of the Beasts, or that no Man be found for the Lord, or for him that took them, for to answer and make the Deliverance, after such time as the Lord or Taker shall be admonished to make Deliverance by the Sheriff or Bailiff, if he be in the Countrey, or near, or there whereas he may be conveniently warned by the Taker, or by any other of his to make Deliverance; if he were out of the Countrey when the taking was, and did not cause the Beasts to be delivered incontinent, that the King, for the Trespass and Despite, shall cause the said Castle or Fortress to be beaten down with-

No. 4. 3 Edward I. c. 17.

No. 2.
3 Edward I. c. 17.

A non omittas to the Sheriff if the Bailiff do not execute the Writ.

'out Recovery; and all the 'Damages that the Plaintiff 'hath sustained in his Beasts, 'or in his Gainure, or any 'otherwise (after the first Demand made by the Sheriff or 'Bailiff) of the Beasts shall be 'restored to him double by 'him that took the Beasts, if 'he have whereof; and if he 'have not whereof, he shall 'have it of the Lord, at what 'Time, or in what Manner 'the Deliverance be made, 'after that the Sheriff or Bailiff shall come to make 'Deliverance; and it is to 'wit, that where the Sheriff 'ought to return the King's 'Writ to the Bailiff of the 'Lord of the Castle or Fortress, or to any other, to 'whom the Return belongeth, 'if the Bailiff of the Franchise 'will not make Deliverance 'after that the Sheriff hath 'made his Return unto him, 'then shall the Sheriff do his 'Office without further Delay, 'and upon the foresaid Pains: 'And in like manner Deliverance shall be made by Attachment of Plaint made 'without Writ, and upon the 'same Pain. And this is to be 'intended in all Places where 'the King's Writ lieth. And 'if that be done in the Marches 'of *Wales*, or in any other 'Place, where the King's 'Writs be not current, the 'King, which is Sovereign 'Lord over all, shall do Right 'there unto such as will complain.'

Marches of Wales.

Cotton *MS*.

Baillif, lui soient restorez du double de celui qe les averes avera pris, sil ad de quoi, & sil nad de quoi, eit dal Seignur quele houre, & in equele manere la deliveraunce soit fait, apres ceo qe le Viscounte ou le Baillif y serra venue pur la deliverance faire. Et fait assavoir, qe la ou le Viscounte devera faire retourne del brief le Roi al Baillif le Seignur del Chastel, ou de la forcelette ou autre, a qi retourne del brief le Roi a ceo appent, si le Baillif de cele fraunchise ne face la deliverance, puis quil avera le retourne, face le Viscount son office saunz delaie, sicome il est avantdit, & sur lavantdite payne: & per mesme la manere soit faite la deliverance per attachement de pleint fait saunz brief, & sur mesme la payne. Et ceo fait a entendre per tout la, ou le brief le Roi court. Et si ceo est en la marche de Gales ou aillours la ou le brief le Roi ne court mye, le Roi, qi est soveraine seignur, en fra droit a ceux qe pleindre se voudront.

## No. 5.

### 6 Edward I. (Gloucester) c. 5.—Several Tenants against whom an Action of Waste is maintainable.

[Inserted Pt. II. Cl. I. No. 7.]

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## No. 6.

### 13 Edward I. (Westminster second) c. 2.—A *Recordare* to remove a Plaint. Pledges to prosecute a Suit. Second Deliverance.

Cotton *MS.*

QUIA domini feodorum distringentes tenentes [illegible] pro serviciis sibi debitis [illegible]ultotiens gravantur per hoc [illegible] cum tenentes sui districtionem suam per breve vel [illegible] brevi replegiaverint ac domini cum ad querimoni[am te]nentium suorum ad comi[tatum] vel ad alium curiam ha[bentem pote]statem placitandi de vetito namio per at[tachiamentum] [illegible] & [illegible] & justam [illegible] districti[onem] [ad]vocaverunt per hoc [illegible] tenentes de[sadv]ocant nic[hil] [illegible] tenere [illegible] clamant tenere [illegible] qui districtionem fecit & [ad]vocavit remansit qui dis[tri]nxit in misericordia & te[nen]tes sui quieti quibus pro [i]lla deadvocatione per recor[du]m comitatus sive aliarum [cu]riarum que recordum non habent pena infligi non potest.

No. 6.
13 Edward I.
c. 2.
The Mischiefs which Lords distraining their Tenants did suffer.

"FORASMUCH as Lords "of Fees distraining their "Tenants for Services and "Customs due unto them, are "many Times grieved, be"cause their Tenants do reple"vy the Distress by Writ or "without Writ: And when the "Lords, at the Complaint of "their Tenants, do come by "Attachment into the County, "[or] unto another Court, having "Power to hold Pleas of *Wi*"*thernam*, and do avow the "taking good and lawful, by "reason that the Tenants dis"avow to hold ought, nor do "claim to hold any thing "of him which took the Dis"tress and avowed it, he that "distrained is amerced, and "the Tenants go quit; to "whom Punishment cannot be "assigned for such disavowing "by Record of the County, "or of other Courts having no "Record."

Decetero provisum est & statutum quod cum hujusmodi domini in com' vel hujusmodi cur' justitiam de hujusmodi tenentibus suis consequi non possint quam cito attachiati fuerunt ad sectam tenentium suorum concedatur eis breve ad ponendum loquelam illam coram Justiciariis coram quibus & non alibi justitia hujusmodi dominis ex-

A Recordare to remove a Plaint out of the County.

'II. It is provided and 'ordained from henceforth, 'That where such Lords 'cannot obtain Justice in 'Counties and such manner of 'Courts against their Tenants, 'as soon as they shall be 'attached at the Suit of their 'Tenants, a Writ shall be 'granted to them to remove 'the Plea before the Justices,

No. 6.
13 Edward I. c. 2.

'afore whom, and none otherwhere, Justice may be ministered unto such Lords; and the Cause shall be put in the Writ, wherefore such a Man distrained in his Fee for Services and Customs to him due. Neither is this Act prejudicial to the Law commonly used, which did not permit that any Plea should be moved before Justices at the Suit of the Defendant. For though it appear at the first Shew that the Tenant is Plaintiff, and the Lord Defendant, nevertheless, having respect to that, that the Lord hath distrained, and sueth for Services and Customs being behind, he appeareth indeed to be rather Actor, or Plaintiff, than Defendant. And to the Intent the Justices may know upon what fresh Seisin the Lords may avow the Distress, reasonable upon their Tenants; from henceforth it is agreed and enacted, That a reasonable Distress may be avowed upon the Seisin of any Ancestor or Predecessor since the Time that a Writ of *Novel disseisin* hath run. And because it chanceth sometime that the Tenant, after that he hath replevied his Beasts, doth sell or alien them, whereby return cannot be made unto the Lord that distrained, if it be adjudged:

**Pledges to prosecute the Suit and to make Return.**

'III. It is provided, That Sheriffs or Bailiffs from henceforth shall not only receive of the Plaintiffs Pled-

Cotton *MS.*

hiberi poterit Et inseratur causa in brevi quia talis distrinxit in feodo suo pro serviciis & consuetudinibus sibi debitis nec per istud statutum derogatur legi communi usitate que non permisit placitum aliquod poni coram Justic' ad petitionem defendentis. Quia licet prima facie videbatur tenens actor & dominus defendens habito tamen respectu ad hoc quod dominus distringit & sequitur pro serviciis & consuetudinibus sibi a retro existentibus realiter potius apparebit actor sive querens quam defendens. Et ut in certo sint Justiciarii de qua recenti seisina poterunt domini advocare rationabilem districtionem super tenentes suos decetero concordatum est quod rationabilis districtio advocari poterit de seisina antecessorum suorum vel predecessorum a tempore quo breve nove disseisine currit. Et quia aliquando contingit quod cum tenens postquam replegiaverit averia sua averia illa vendit vel elongat quo minus returnum fieri possit domino distringenti si adjudicetur.

Provisum est quod vic' aut ballivi de cetero non recipiant a conquerentibus solummodo pleg' (1.) de prosequendo ante.

(1.) The Sheriff is answerable for the Sufficiency of the Pledges; Richards *v.* Acton, 2 Bl. 1220; Rous *v.* Patterson, 16 Vin. Ab. 399. Some Evidence must be given of the Insufficiency of the Pledges, but very slight Evidence is sufficient to throw the Burthen on the Sheriffs; Saunders *v.* Darling, B. N. P. 60. See post. 11 G. II. c. 19, sec. 23, and Notes.

Cotton *MS.*

quam deliberationem faciant de averiis set etiam de averiis retornandis si adjudicetur returnum. Et si quis alio modo pleg' receperit respondeat ipse de pretio averiorum & habeat dominus distringens recuperare per breve quod reddat ei tot averia vel tot catalla & si non habeat ballivus unde reddat reddat superior suus. Et quia aliquando contingit quod postquam ajudicatum fuerit distringenti returnum averiorum & sic districtus postquam averia sic retornata iterum replegiaverit cum viderit distringentem comparentem in curia paratum sibi respondere defaltam fecerit ob quam iterum adjudicabitur distringenti returnum averiorum & sic bis tertio & in infinitum replegiabuntur averia nec habebunt judicia curie Regis in hoc casu effectum super quo non fuit prius remedium provisum ordinatus est in hoc casu talis processus quod quam cito adjudicatum fuerit distringenti returnum averiorum per breve de judicio mandetur vicecomiti quod returnum habere faciat distringenti de averiis in quo brevi inseratur quod vicecomes ea non deliberet sine brevi in quo fiat mentio de judicio per Justiciarios reddito quod fieri non poterit nisi per breve quod exeat de rotulis Justiciariorum coram quibus deducta fuerit loquela. Cum igitur adierit Justic' & petierit averia sua iterum replegiari fiat ei hoc breve de judicio quod vicecomes capta securitate de prosequendo & etiam de averiis vel catallis retornandis vel eorum pretio si adjudicetur returnum deliberet ei averia vel catalla prius retornata et attachietur

'ges for the pursuing of the 'Suit, before they make Deli- 'verance of the Distress, but 'also for the Return of the 'Beasts, if Return be award- 'ed. And if any take Pledges 'otherwise, he shall answer 'for the Price of the Beasts, 'and the Lord that distraineth 'shall have his Recovery by 'Writ, that he shall restore 'unto him so many Beasts or 'Cattle; and if the Bailiff be 'not able to restore, his Supe- 'riour shall restore. And for- 'asmuch as it happeneth some- 'time, that after the Return of 'the Beasts is awarded unto 'the Distrainor, and the Party 'so distrained, after that the 'Beasts be returned, doth re- 'plevy them again, and when 'he seeth the Distrainor ap- 'pearing in the Court ready 'to answer him, doth make 'Default, whereby Return of 'the Beasts ought to be award- 'ed again unto the Distrainor, 'and so the Beasts be reple- 'vied twice or thrice, and in- 'finitely, and the Judgments 'given in the King's Court 'take no Effect in this Case, 'whereupon no Remedy hath 'been yet provided: in this 'Case such Process shall be 'awarded, that so soon as Re- 'turn of the Beasts shall be 'awarded to the Distrainor, 'the Sheriff shall be command- 'ed by a judicial Writ to make 'Return of the Beasts unto the 'Distrainor; in which Writ it 'shall be expressed, that the 'Sheriff shall not deliver them 'without Writ, making men- 'tion of the Judgment given 'by the Justices, which can- 'not be without a Writ issuing 'out of the Rolls of the said 'Justices before whom the

No. 6. 13 Edward I. c. 2.

No. 6.
33 Edward I. c. 2.

A Writ of second Deliverance.

A Distress irrepleviable.

'Matter was moved. Therefore when he cometh unto the Justices, and desireth Replevin of the Beasts, he shall have a judicial Writ, that the Sheriff taking Surety for the Suit, and also of the Beasts or Cattle to be returned, or the Price of them (if Return be awarded) shall deliver unto him the Beasts or Cattle before returned, and the Distrainor shall be attached to come at a certain Day before the Justices, afore whom the Plea was moved in Presence of the Parties. And if he that replevied make Default again, or for another Cause Return of Distress be awarded, being now twice replevied, the Distress shall remain irrepleviable; but if a Distress be taken of new, and for a new Cause, the Process abovesaid shall be observed in the same new Distress.'

Cotton *MS.*

qui distrinxit ad veniendum ad certum diem coram Justiciariis coram quibus placitum deducatur in presentia partium. Et si iterato ille qui replegiaverit fecerit de'altam vel alia occasione adjudicetur returnum districtionis jam bis replegiate, remaneat districtio illa imperpetuum irreplegiabilis set si de novo & de nova causa fiat districtio de nova districtione servetur processus supradictus.

## No. 7.

**25 Edward III. stat 5. c. 17.—Process of Exigent shall be awarded in Debt, Detinue, and Replevin.**

## No. 8.

**7 Henry VIII. c. 4.—An Act concerning Avowries for Rents and Services.**

No. 8.
7 Henry VIII. c. 4.

How Rents and Services may be recovered by Avowry.

'WHEREAS divers, as well Noblemen as other the King's Subjects, have suffered Recoveries against them of divers their Manors, Lordships, Lands, and Tenements, for the Performance of their Wills, or for the Surety of their Wives Jointures, or for the Jointure of their Sons and Heirs apparent, and their Wives, or of any other Person or Persons, according to their Covenants, and Agreements, and those Persons that so have recovered the said Manors by the Course of the Common Law, had no Remedy, nor may have, to compel the Fermors, Freeholders, and Tenants, which

No. 8. 7 Henry VIII. c. 4.

'held of the same Manors by Rents, Services, or Customs, to 'attorn to them; nor could by the Order of the Law attain 'to the said Rents, Services, or Customs (if they were de-'nied) by Distress or Action, without they could once attain 'to the Possession of the same Rents, Services, and Customs, 'by paying or doing the said Rents, Services, or Customs, by 'the same Freeholders, Fermors, and Tenants; which to do, 'divers and many of them have oftentimes refused, and yet 'do, to the great Offence and Charge of their Conscience, not 'only to the Disheritance of the said Recoverers, but also in 'breaking of the last Wills of them against whom such Re-'covery is had, and also to the Disheritance of the said Hus-'band and Wife, or other to whose Use the same Recovery was 'so had. Also if there were any Advowson appendant to any 'of the said Manors, the same Advowson had fallen void, and a 'Stranger had presented, the said Recoverers, nor they to 'whose Use the same Recoveries were had, had no Remedy 'for the same Disturbance, and sometime thereby they have 'been disinherited.'

Recoverer may distrain and shall have a Quare Impedit.

II. Be it therefore enacted by this present Parliament, and by Authority of the same, That the Recoverers in all such Recoveries, their Heirs and Assigns, may from henceforth distrain for the foresaid Rents, Services, and Customs, so being due and unpaid, and make Avowry, or justify the same, as those Persons against whom the said Recovery is, should have done if the said Recovery had not been had; and also have like Remedy for the recovering of the said Rents, Services, and Customs by Avowry; and also a *Quare impedit* for the said Advowson, if any Disturbance be made; as those Persons against whom the said Recoveries were had, might or should have had by the Course of the Common Law afore the said Recovery, if any such Rents, Services, or Customs had been denied them, or any such Disturbance had been had in their Times.

Avowant shall recover his Damages, &c.

III. And also that every Avowant, and every other Person or Persons that make Avowry, Conisance, or Knowledge, or justify, as Baily to any other Person or Persons in any *Replegiari*, or second Deliverance for any Rent, Custom, or Service, if their Avowry, Conisance, or Justification be found for him, or the Plaintiffs in the said Actions otherwise barred, shall recover their Damages and Costs that they have sustained, as the Plaintiff should have done, if they had recovered in the said Replevins.

## No. 9.

### 21 Henry VIII. c. 19. — Avowries shall be made by the Lord upon the Land, without naming his Tenant.

No. 9. 21 Henry VIII. c. 19.

'WHERE as well the Noblemen of this Realm, as divers 'other Persons, by Fines, Recoveries, Grants, and 'secret Feoffments, and Leases made by their Tenants to Per'sons unknown, of the Lands and Tenements holden of them, 'have been put from the Knowledge of their Tenants, upon 'whom they should by Order of the Law make their Avowries 'for their Rents, Customs, and Services, to their great Losses 'and Hindrances:'

An Avowry may be made by the Lord upon the Land holden of him without naming his Tenant.

II. Be it therefore enacted, established, and ordained by Authority of this present Parliament, That wheresoever any Manor Lands, Tenements, and other Hereditaments be holden of any Manner Person or Persons, by Rents, Customs, or Services, that if the Lord, of whom any such Manor Lands, Tenements, or Hereditaments be so holden, distrain upon the same Manors, Lands, or Tenements, for any such Rents, Customs, or Services, and Replevin thereof be sued, that the Lord of whom the same Lands, Tenements, or Hereditaments be so holden, may avow, or his Bailiff or Servant make Conisance, or justify, for taking of the said Distresses upon the same Lands, Tenements, or Hereditaments, so holden, as in Lands or Tenements within his Fee or Seigniory, alledging in the said Avowry, Conisance, and Justification, the same Manors, Lands, and Tenements to be holden of him, (1.) without naming of any Person certain to be Tenant of the same, and without making any Avowry, Justification, or Conisance upon any Person certain; and likewise the Lord, Baily, or Servant to make Avowry, Justification, or Conisance in like Manner and Form upon every Writ sued of second Deliverance.

Avowry in second Deliverance.

The Avowant shall recover Damages and Costs of Suit.

III. And also be it enacted by the said Authority, That every Avowant, and every other Person or Persons that make any such Avowry, Justification, or Conisance, as Baily or Servant to any Person or Persons in any Replegiare, or second Deliverance, for Rents, Customs, Services, or for Damage fesant, or other Rent or Rents, upon any Distress taken in any Lands or Tenements, if the same Avowry, Conisance, or Justification be found for them, or the Plaintiffs in the same be nonsuit, or otherwise barred, that then they shall recover their Damages and Costs (2.) against the said Plaintiffs, as

(1.) To an Avowry upon the Statute the Plaintiff cannot plead *Non tenuit* generally, but he may plead all other Pleas as at Common Law; Paramor *v.* Chapman, Cro. Jac. 127.

(2.) If the Plaintiff plead a bad Plea in bar, and the Defendant, instead of demurring, replies, and after Verdict for the Plaintiff, Judgment is given for the Defendant, on account of the Insufficiency of the Plea, the Defendant is not intitled to any Costs subsequent to the Plea. Per Rooke J. "The Statute was not intended to give Costs to an Avowant in Replevin in a different Manner from what they are given by other Statutes in other Actions;" Da Costa *v.* Clarke, 2 B. and P. 376.

the same Plaintiffs should have done or had, if they had recovered in the Replegiare, or second Deliverance found against the said Defendants. No. 9. 21 Henry VIII. c. 19.

IV. And be it also ordained, That the said Plaintiffs and Defendants in the said Writs of Replegiare, or Writs of second Deliverance, and in every of them, shall have like Pleas, and like Aid-Prayers in all such Avowries, Conisances, and Justifications (Pleas of Disclaimer only except) as they might have had before the making of this Act, and as though the said Avowry, Conisance, or Justification had been made after the due Order of the Common Law. Like Pleas and Aid Prayers at the Common Law.

V. And it is further enacted by the said Authority, That all such Persons as by the Order of the Common Law may lawfully join to the Plaintiffs or Defendants in the said Writs of Replegiare, or second Deliverance, as well without Process as by Process, shall from henceforth join unto the said Plaintiffs or Defendants, as well without Process as by Process, and to have like Pleas, and like Advantages in all Things (Disclaimer only except) as they might have done by the Order of the Common Law before the making of this Act. Like Joinder in Aids as at the Common Law.

## No. 10.

### 32 Henry VIII. c. 28.—Lessees to enjoy the Farm against the Tenants in Tail.

[Inserted P. 2. C. 8. No. 1.]

## No. 11.

### 32 Henry VIII. c. 34.—Concerning Grantees of Reversions to take Advantage of the Conditions to be performed by the Lessees.

[Inserted P. 2. Cl. 1 [illegible] c. 34.]

## No. 12.

### 32 Henry VIII. c. 37.—For Recovery of Arrearages of Rents by Executors of Tenant in Fee Simple.

'FORASMUCH as by the Order of the Common Law the 'Executors or Administrators of Tenants in Fee-simple, 'Tenants in Fee-tail, and Tenants for Term of Lives, (1.) of 'Rents Services, Rent Charges, Rents Secks, and Fee-'farms, (2.) have no Remedy to recover such Arrearages of the No. 12. 32 Henry VIII. c. 37.

(1.) The Province of the Act is not confined to Executors of Tenants, *pur auter vie*, but extends to the Executors of all Tenants for Life; Hool *v.* Bell, 1 Lord Raym. 172. Creditor by Eligit of Tenant for Life of a Rent Charge is not within the Act; B. N. P. 56: nor the Executors of a Grantee of a Rent Charge for Years, if he so long live; id. ibid. The Act does not extend to Copyhold Rents; Yelv. 135.

(2.) In Buller, N. P. 57, is the following Passage:—" Lord Coke says, if a Man make Lease for Life, or a Gift in Tail, reserving a Rent, this

No. 12.
32 Henry VIII. c. 37.

'said Rents or Fee-farms as were due unto their Testators in 'their Lives, nor yet the Heirs of such Testator, nor any 'Person having the Reversion of his Estate after his Decease, 'may distrain, or have any lawful Action to levy any such 'Arrearages of Rents or Fee-farms, due unto him in his Life 'as is aforesaid; by reason whereof, the Tenants of the demean 'of such Lands, Tenements or Hereditaments, out of the which 'such Rents were due and payable, who of Right ought to pay 'their Rents and Farms at such Days and Terms as they were 'due, do many Times keep, hold and retain such Arrearages 'in their own Hands, so that the Executors and Administrators 'of the Persons to whom such Rents or Fee-farms were due, 'cannot have or come by the said Arrearages of the same, 'towards the Payment of the Debts and Performance of the 'Will of the said Testators;" For Remedy whereof, be it enacted by the Authority of this present Parliament, That the Executors and Administrators of every such Person or Persons, unto whom any such Rent or Fee Farm is or shall be due, and not paid at the Time of his Death, shall and may have an Action of Debt for all such Arrearages, against the Tenant or Tenants that ought to have paid the said Rent or Fee-farms so being behind in the Life of their Testator, or against the Executors and Administrators of the said Tenants; and also furthermore, it shall be lawful to every such Executor and Administrator of any such Person or Persons unto whom such Rent or Fee-farm is or shall be due, and not paid at the Time of his Death as is aforesaid, to distrain for the Arrearages of all such Rents and Fee-farms, upon the Lands, Tenements and other Hereditaments, which were charged with the Payment of such Rents or Fee-farms, and chargeable to the Distress of the said Testator, so long as the said Lands, Tenements or Hereditaments continue, remain and be in the Seisin or Possession of the said Tenant in Demesn, who ought immediately (3.) to have paid the said Rent or Fee-farm so being behind, to the said Testator in his Life, or in the Seisine or Possession of any other Person or Persons claiming the said Lands, Tenements and Hereditaments, only by and from the same Tenant by Purchase, Gift or Descent, (4.) in like

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is a Rent Service within the Statute; from which it may be inferred, that he thought a Rent reserved upon a Lease for Years was not within it; and I apprehend that it is not; for the Landlord is not Tenant in Fee, &c. of such a Rent, and it is the Executors of such Tenants only who are mentioned in the Act. However, in Trespass, where it appeared that the Defendant had distrained the Plaintiff's Goods for Rent due to his Testator, upon a Lease for Years, Lord Ch. Jus. Lee held it to be within the Statute, and the Defendant had a Verdict; Powell *v.* Kellick, Westm. M. 25, Geo. II."

(3) It is not necessary in an Avowry to aver that the Place remains in the Seisin of the Person who ought to have paid the Rent, or of Persons claiming under him. The Plaintiff, if he is not liable, should shew how he is not liable; Hool *v.* Bell, 1 Lord Raym. 172.

(4.) In Braithwaite *v.* Cooksey, 1 H. B. 465, it is said that the Statute enables the Landlord to distrain against Executors or Administrators. This Observation is not correct, if intended to import that there is any such express Provision.

Manner and Form as their said Testator might or ought to have done in his Life-time, and the said Executors and Administrators shall, for the same Distress, lawfully make Avowry upon their Matter aforesaid. (5.)

No. 12. 32 Henry VIII. c. 37.

II. Provided alway, That this Act, nor any Thing therein contained, shall not extend to any such Manor, Lordship, or Dominion in *Wales*, or in the Marches of the same, whereof the Inhabitants have used, Time out of the Mind of Man, to pay unto every Lord, or Owner of such Lordship, Manor, or Dominion, at his or their first Entry into the same, any Sum or Sums of Money, for the Redemption and Discharge of all Duties, Forfeitures and Penalties, wherewith the said Inhabitants were chargeable to any of their said Lords Ancestors or Predecessors before his said Entry.

Redemption Money paid in Wales and the Marches.

III. And further be it enacted by the Authority aforesaid, That if any Man which now hath, or hereafter shall have in the Right of his Wife, any Estate in Fee-simple, Fee-tail, or for Term of Life, of or in any Rents or Fee-farms, and the same Rents or Fee-farms now be, or hereafter shall be due, behind and unpaid in the said Wife's Life; then the said Husband, after the Death of his said Wife, his Executors and Administrators, shall have an Action of Debt for the said Arrearages against the Tenant of the Demesn that ought to have paid the same, his Executors or Administrators; and also the said Husband, after the Death of his said Wife, may distrain for the said Arrearages, in like Manner and Form, as he might have done, if his said Wife had been then living, and make Avowry upon his Matter as is aforesaid.

The Husband's Remedy for Rent due in the Right, and in the Life of his Wife.

IV. And likewise it is further enacted by the Authority aforesaid, That if any Person or Persons which now have, or hereafter shall have, any Rents or Fee-farms for Term of Life or Lives, of any other Person or Persons, and the said Rent or Fee-farm now be, or hereafter shall be due, behind and unpaid in the Life of such Person or Persons for whose Life or Lives the Estate of the said Rent or Fee-farm did depend or continue, and after the said Person or Persons do die; then he unto whom the said Rent or Fee-farm was due in Form aforesaid, his Executors or Administrators shall and may have an Action of Debt against the Tenant in Demesn, that ought to have paid the same when it was first due, his Executors and Administrators, and also distrain for the same Arrearages upon such Lands and Tenements, out of the which the said Rents or Fee-farms were issuing and payable, in such like Manner and Form as he ought or might have done, if such Person or Persons by whose Death the aforesaid Estate in the said Rents and Fee-farms was determined and expired, had been in full Life and not dead; and the Avowry for the taking of the same Distress to be made in Manner and Form aforesaid.

The Remedy for a Rent, the Estate whereof dependeth upon another's Life being dead.

(5.) An Executor upon such Avowry is intitled to Costs, although this Statute is subsequent to those giving Costs to an Avowant; 2 Rol. Rep. 437.

## No. 13.

### 1 and 2 Philip and Mary, c. 12.—An Act for the impounding of Distresses.

No. 13. 1 & 2 Philip and Mary, c. 12.

Where Distresses taken shall be impounded.

'FOR the avoiding of grievous Vexations, Exactions, 'Troubles and Disorder in taking of Distresses, and 'impounding of Cattle,' Be it enacted by the Authority of this present Parliament, That from and after the first Day of *April* next coming, no Distress of Cattle shall be driven out of the Hundred, Rape, Wapentake or Lathe where such Distress is or shall be taken, except that it be to a Pound overt within the same Shire, (1.) not above three Miles distant from the Place where the said Distress is taken: And that no Cattle or other Goods distrained or taken by way of Distress for any manner of Cause at one Time, shall be impounded in several Places, whereby the Owner or Owners of such Distress shall be constrained to sue several Replevies for the Delivery of the said Distress so taken at one Time; upon Pain every Person offending (2.) contrary to this Act, shall forfeit to the Party grieved, for every such Offence, an hundred Shillings, and treble Damages.

How much may be taken for Poundage.

II. And be it further enacted by the Authority aforesaid, That after the said first Day of *April*, no Person or Persons shall take for keeping in Pound, Impounding or Poundage of any manner of Distress, above the Sum of four Pence for any one whole Distress that shall be so impounded; and where less hath been used, there to take less; upon the Pain of five Pounds, to be paid to the Party grieved over and beside such Money as he shall take above the Sum of four Pence; any Usage or Prescription to the contrary in any wise notwithstanding.

The Sheriff shall appoint four Deputies to make Replevins.

III. And for the more speedy Delivery of Cattle taken by way of Distress, it is further enacted by the said Authority, That every Sheriff of Shires, being no Cities nor Towns made Shires, shall at his first County-Day, or within two Months next after he hath received his Patent of his Office of Sheriffwick, shall depute, appoint and proclaim in the Shire-Town within his Bailiwick, four Deputies (3.) at the least, dwelling not above twelve Miles, one distant from another; which said Deputies so appointed and proclaimed shall have Authority in

(1.) Driving to the next Pound in another Shire does not make the Party a Trespasser, although it subjects him to the Penalty of the Statute; Gimbart *v.* Pelah, 2 Str. 1272. When Lands in adjoining Counties are let upon one Demise they may all be taken to a Pound in either of the Counties, but they cannot be driven through an intermediate County if the Counties do not adjoin; Walter *v.* Rumbal, 1 Ld. Raym. 53; 1 Salk. 247. In an Action for driving into another County, the Venue may be laid in either County; Pope *v.* Davis, 2 Taunt. 252.

(2.) An Offence against this Act is satisfied by one Forfeiture, although several Persons be concerned; Partridge *v.* Nailor, Cro. Eliz. 480; Moore, 453.

(3.) The Deputy is answerable for the Sufficieney of the Pledges as well as the Sheriff; Richards *v.* Acton, 2 Bl. Rep. 1220.

the Sheriff's Name to make Replevies and Deliverance of such Distresses, in such Manner and Form as the Sheriff may and ought to do; upon Pain that every Sheriff for every Month that he shall lack such Deputy or Deputies, shall forfeit for every such Offence five Pounds; the one Half of which Forfeitures shall be to the King and Queen's Highness, her Heirs and Successors, the other Half to him that will sue for the same by Bill, Plaint, Information or Action of Debt, in any the King and Queen's Courts of Record, in which no Essoin, Protection nor Wager of Law shall be admitted. No. 13. 1 & 2 Philip and Mary, c. 12.

## No. 14.

1 Elizabeth, c. 19.—An Act giving Authority to the Queen's Majesty, upon the Avoidance of any Archbishoprick or Bishoprick, to take into her Hands certain of the Temporal Possessions thereof, recompensing the same with Parsonages impropriate and Tenths.

[Inserted P. 2. C. 8. No. 4.]

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## No. 15.

13 Elizabeth, c. 20.—An Act touching Leases of Benefices, and other Ecclesiastical Livings, with Cure.

[Inserted P. 2. Cl. 8. No. 6.]

## No. 16.

18 Elizabeth, c. 6.—An Act for Maintenance of the Colleges in the Universities, and of *Winchester* and *Eaton*.

## No. 17.

17 Charles II. c. 7.—An Act for a more speedy and effectual Proceeding upon Distresses and Avowries for Rents.

'FORASMUCH as the ordinary Remedy for Arrearages of 'Rents, is by Distress upon the Lands chargeable there-'with; and yet nevertheless, by reason of the intricate and 'dilatory Proceedings upon Replevins, that Remedy is become 'ineffectual:' No. 17. 17 Charles II. c. 7.

II. For Remedy thereof, it is enacted by the King's most Excellent Majesty, with the Advice and Assent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That whensoever any Plaintiff in Replevin shall be nonsuit before

No. 17.
17 Charles II. c. 7.

Plaintiff in Replevin being nonsuit before Issue joined, how the Defendant may avow.

Issue joined, (1.) in any Suit of Replevin by Plaint or Writ lawfully returned, removed, or depending, in any of the King's Courts at *Westminster*, that the Defendant making a Suggestion in Nature of an Avowry or Cognizance for such Rent, to ascertain the Court of the Cause of Distress, the Court upon his Prayer shall award a Writ to the Sheriff of the County where the Distress was taken, to enquire by the Oaths of Twelve good and lawful Men of his Bailiwick, touching the Sum in Arrear at the Time of such Distress taken, and the Value of the Goods or Cattle distrained: And thereupon Notice of Fifteen Days (2.) shall be given to the Plaintiff or his Attorney in Court, of the Sitting of such Enquiry; and thereupon the Sheriff shall enquire of the Truth of the Matters contained in such Writ, by the Oaths of Twelve good and lawful Men of his County: And upon the Return of such Inquisition, the Defendant shall have Judgement to recover against the Plaintiff the Arrearages of such Rent, in case the Goods or Cattle distrained shall amount unto that Value: And in case they shall not amount to that Value, then so much as the Value of the said Goods and Cattle so distrained shall amount unto, together with his full Costs of Suit; and shall have Execution thereupon by *Fieri facias* or *Elegit*, or otherwise as the Law shall require: And in case such Plaintiff shall be nonsuit after Cognizance or Avowry made, and Issue joined, or if the Verdict shall be given against such Plaintiff; then the Jurors that are impanelled or returned to enquire of such Issue, shall, at the Prayer of the Defendant, inquire concerning the Sum of the Arrears, and the Value of the Goods or Cattle distrained; (3.) and thereupon the Avowant, or he that makes Cognizance, shall have Judgement for such Arrearages, or so much thereof as the Goods or Cattle distrained amount unto, together with his full Costs, and shall have Execution for the same by *Fieri facias* or *Elegit*, or otherwise, as the Law shall require. (4.)

(1.) The Avowant, after Judgment by Default for Want of a Plea, may sue the Sureties on the Replevin Bond, and need not proceed upon the Statute; Waterman *v.* Yea, 2 Wils. 41.

(2.) The same Notice should be given where the Judgment is on Demurrer; Burton *v.* Hickey, 1 Marsh. 444.

(3.) This Statute has taken away the Writ of Second Deliverance; Per Curiam, Playters *v.* Sheering, 1 Ventr. 64. But see Cooper *v.* Sherbrooke, 2 Wils. 116; in which the Execution of a Writ of Inquiry, after issuing a Writ of Second Deliverance, was held regular.

(4.) The Verdict being for the Defendant upon Cognizance for Rent, as to one Count, and *non cepit* as to another, and giving Damages, without finding the Amount of the Rent, or the Value of the Goods, the Court, upon Writ of Error, allowed the Defendant to enter Judgment *pro retorno habendo* at Common Law, upon Payment of Costs; Rees *v.* Morgan, 3 T. R. 349. On a Verdict for the Plaintiff, with Damages, not finding the Amount and Value, Judgment for the Damages and Costs, and *pro retorno habendo*, although not good under this Statute, is good for the Damages under St. 21 Henry VIII. c. 19, ante; and is also good at Common Law, as Judgment *pro retorno*, although not awarded to be irreplevisable; Gamon *v.* Jones, 4 T. R. 509. And Q. whether there can be a Writ of Inquiry, when the Jury have found for the Defendant, but omitted to find the Value; Freeman *v.* Lady Archer, 2 Bl. Rep. 763.

III. And be it further enacted by the Authority aforesaid, That if Judgement in any of the Courts aforesaid be given upon Demurrer for the Avowant, or him that maketh Cognizance for any Rent, the Court shall, at the Prayer of the Defendant, award a Writ to inquire of the Value of such Distress; and upon the Return thereof Judgement shall be given for the Avowant, or him that makes Cognizance as aforesaid, for the Arrears alledged to be behind in such Avowry or Cognizance, if the Goods or Cattle so distrained shall amount to that Value; and in case they shall not amount to that Value, then for so much as the said Goods or Cattle so distrained amount unto, together with his full Costs of Suit, and shall have like Execution as aforesaid.

No. 17. 17 Charles II. c. 7.

Judgement upon Demurrer for the Avowant.

IV. Provided always, and be it enacted, That in all Cases aforesaid, where the Value of the Cattle distrained, as aforesaid, shall not be found to be to the Value of the Arrears distrained for, that the Party to whom such Arrears were due, his Executors or Administrators, may from Time to Time distrain again for the Residue of the said Arrears. [Extended to *Wales* and the Counties Palatine, by 19 Car. 2. c. 5.]

## No. 18.

19 Charles II. c. 5.—An Act extending a former Act concerning Replevins and Avowries, to the Principality of *Wales*, and the County Palatines.

No. 18 19 Charles II. c. 5.

17 Charles 2. c. 7.

'WHEREAS by an Act of Parliament, intituled, "An Act for the more speedy and effectual Proceeding upon Distresses and Avowries for Rents," Provision is made where any Plaintiff shall be nonsuit before Issue joined in any Suit or *Replevin*, by Plaint or Writ lawfully returned, removed, or depending in any of the King's Courts at *Westminster*;' be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, That the said Act, and all the Powers and Provisions thereby made for Causes of *Replevins* depending in his Majesty's Courts of *Westminster*, shall be extended and be of the same Force and Efficacy in all Causes of *Replevin*, which are or shall be depending in his Majesty's Court of Common Pleas for the County Palatine of *Lancaster*, the Courts of the Great Sessions of his Majesty's Principality of *Wales*; the Court of the Great Sessions or Assizes for the County Palatine of *Chester*, and the Court of Common Pleas for the County Palatine of *Durham*, as fully and as amply for and during the Continuance of the said Act, as if the said Courts had been mentioned therein.

Lancaster, Wales, Chester.

## No. 19.

### 19 Charles II. c. 6.—An Act for Redress of Inconveniencies by Want of Proof of the Deceases of Persons beyond the Seas or absenting themselves, upon whose Lives Estates do depend.

[Inserted Pt. 2. Cl. 2. No. 16.]

## No. 20.

### 2 William and Mary, sess. 1. c. 5.—An Act for enabling the Sale of Goods distrained for Rent, in case the Rent be not paid in a reasonable Time.

No. 20.
2 Wm. & Mary sess. 2. c. 5.

'WHEREAS the most ordinary and ready Way for Recovery of Arrears of Rent is by Distress, yet such 'Distresses not being to be sold, but only detained as Pledges 'for enforcing the Payment of such Rent, the Persons distraining have little Benefit thereby:' For the remedying whereof,

Goods distrained for Rent may be appraised and sold.

II. Be it enacted and ordained by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of *June*, in the Year of our Lord One thousand six hundred and ninety, that where any Goods or Chattels shall be distrained for any Rent reserved (1.) and due upon any Demise, Lease, or Contract whatsoever, and the Tenant or Owner (2.) of the Goods so distrained shall not, within five Days (3.) next after such Distress taken, and Notice thereof (with the Cause of such Taking) left at the Chief Mansion House, or other most notorious Place on the Premises (4.) charged with the Rent distrained for, replevy the same, with sufficient Security to be given to the Sheriff according to Law, that then in such Case, after such Distress and Notice as aforesaid, and Expiration of the said five Days, (5.)

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(1.) This Statute evidently extends only to Rents reserved upon Lease or Contract. The Stat. 4 George II. c. 28, s. 5, which gives a Power to distrain for Rents and Entry, Rents of Assize and Chief Rents, also contains a Power of Sale. The Irish Statute 25 Geo. II. c. 13, gives a Power of Sale in case of Distress for Rent Services, Fee Farm Rents, or Rent Charges. This is not provided for by any English Statute, except so far as the Term Chief Rents in 4 Geo. II. may be supposed to include Rents Services and Fee Farm Rents.

(2.) The Owner of the Goods, to whom Notice has been given, cannot object that Notice has not been given to the Tenant of the Land; Walter *v.* Rumbal, 1 Lord Raym. 53.

(3.) This is construed inclusive, so that Goods distrained on Saturday Morning may be sold on Thursday Afternoon; Wallace *v.* King, 1 H. B. 13.

(4.) This is not necessary, if personal Notice is given to the Party; Walter *v.* Rumbal, 1 Lord Raym. 53.

(5.) In Griffin *v.* Scott, 2 Ld. Raym. 1424; Str. 717, it was ruled that Trespass might be maintained for suffering the Goods (in Cases not provided for by the Act) to remain on the Premises an unreasonable Time, after the five Days, and that three Days was an unreasonable Time; see St. 11 Geo. II. c. 19, post., sec. 10, and Winterbourne *v.* Morgan, 11 E. 395.

the Person distraining shall and may, with the Sheriff or Under Sheriff of the County, or with the Constable of the Hundred, Parish, or Place (6.) where such Distress shall be taken (who are hereby required to be aiding and assisting therein), cause the Goods and Chattels so distrained to be appraised (7.) by Two sworn Appraisers (whom such Sheriff, Under Sheriff, or Constable, are hereby impowered to swear) to appraise the same truly, according to the best of their Understandings; and after such Appraisement shall and may lawfully sell (8.) the Goods and Chattels so distrained for the best Price can be gotten for the same, towards Satisfaction of the Rent for which the said Goods and Chattels shall be distrained, and of the Charges of such Distress, Appraisement, and Sale, leaving the Overplus (if any) in the Hands of the said Sheriff, Under Sheriff, or Constable, for the Owner's Use.

No. 20. 2 Wm. & Mary, sess. 1. c. 5.

Corn loose, &c. may be detained and sold.

'III. And whereas no Sheaves or Cocks of Corn loose or 'in the Straw, or Hay in any Barn, or Granary, or on any 'Hovel, Stack, or Rick, can by the Law be distrained, or 'otherwise secured for Rent, whereby Landlords are often-'times cousened and deceived by their Tenants, who sell 'their Corn, Grain, and Hay to Strangers, and remove the 'same from the Premises chargeable with such Rent, and 'thereby avoid the Payment of the same;' be it further enacted by the Authority aforesaid, That, for remedying the said Practice and Deceit, it shall and may, from and after the said first Day of *June*, be lawful to and for any Person or Persons having Rent arrear and due upon any such Demise, Lease, or Contract, as aforesaid, to seize and secure any Sheaves or Cocks of Corn, or Corn loose or in the Straw, or Hay lying or being in any Barn or Granary, or upon any Hovel, Stack, or Rick, or otherwise upon any Part of the Land or Ground charged with such Rent, and to lock up or detain the same in the Place where the same shall be found, for or in the Nature of a Distress, until the same shall be replevied upon such Security to be given as aforesaid; and in Default of replevying the same as aforesaid, within the Time aforesaid, to sell the same after such Appraisement thereof to be made; so as nevertheless such Corn, Grain, or Hay so distrained as aforesaid, be not removed by

(6.) Where the Premises lay partly in the Hundred of Andover, and partly in the Hundred of Kinalsey, and the Goods were all impounded in Kinalsey, the Constable of Kinalsey was the proper Officer to administer the Oath for the Appraisement of the whole Distress; Walter *v.* Rumbal, 1 Ld. Raym. 53. Q. if Goods taken in one Parish can be appraised by a Constable of a different Parish in the same Hundred; semble not; Wallace *v.* King, 1 H. B. 13.

(7.) The Goods, although appraised, may be replevied after the five Days, unless actually sold; Jacob *v.* King, 1 Marsh, 135.

(8.) Semble this Provision does not authorize distraining Things which were previously exempt; Gorton *v.* Falkner, 4 T. R. 565. The Money produced by the Sale vests in the first Instance in the Landlord, therefore a Subtenant, whose Goods are distrained and sold by the original Landlord, cannot maintain Assumpsit against the immediate Tenant for Money paid to his Use; Moore *v.* Pyrke, 11 E. 52.

No. 20. 2 Wm. & Mary, sess. 1 c. 5.

the Person or Persons distraining, to the Damage of the Owner thereof, out of the Place where the same shall be found, and seized, but be kept there (as impounded) until the same shall be replevied, or sold in Default of replevying the same within the Time aforesaid. (9.)

Treble Damages for Pound-breach.

IV. And be it further enacted by the Authority aforesaid, That, upon any Pound-breach or Rescous of Goods or Chattels distrained for Rent, the Person or Persons grieved thereby shall, in a special Action upon the Case (10.) for the Wrong thereby sustained, recover his and their treble Damages and Costs of Suit against the Offender or Offenders in any such Rescous or Pound-breach, any or either of them, or against the Owners of the Goods distrained, in case the same be afterwards found to have come to his Use or Possession. (11.)

Double Damages and Costs against wrongful Distrainer.

V. Provided always, and be it further enacted, That in case any such Distress and Sale as aforesaid, shall be made by virtue or colour of this present Act for Rent pretended to be arrear and due, where in Truth no Rent is arrear or due to the Person or Persons distraining, or to him or them in whose Name or Names, or Right, such Distress shall be taken as aforesaid, that then the Owner of such Goods or Chattels distrained and sold as aforesaid, his Executors or Administrators, shall and may, by Action of Trespass, or upon the Case, to be brought against the Person or Persons so distraining, any or either of them, his or their Executors or Administrators, recover double of the Value of the Goods or Chattels so distrained and sold, together with full Costs of Suit.

(9.) If standing Corn is sold under an Execution, and afterwards cut by the Vendee, it cannot be distrained before it is fit to be carried; Gilb. Distr. (3d. Ed.) 50; secus, where it is permitted to remain after Severance, semble Parslow *v.* Cripps, Com. Rep. 203; but, N. B, the Report only purports to contain the Argument of Counsel, without stating any Decision.

(10.) It is no Answer to such Action that the Rent, &c. was tendered after the Impounding; Firth *v.* Purvis, 5 T. R. 432.

(11.) The Irish Statute 8 Geo. I. c. 2, contains some salutary Provisions, giving a summary Jurisdiction to Justices of Peace in case of Rescue of a Distress.

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## No. 21.

### 8 Anne, c. 14.—An Act for the better Security of Rents, and to prevent Frauds committed by Tenants.

No. 21. 8 Anne, c. 14.

After the first of May, 1710, no Goods, &c. shall be taken in Execution, &c. unless the Party before Removal of the Goods, &c. pay the Landlord the Rent due.

FOR the more easy and effectual Recovery of Rents reserved on Leases for Life or Lives, Term of Years, at Will or otherwise; Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the Authority of the same, That from and after the first day of *May*, which shall be in the Year of our Lord one thousand seven hundred and ten, no Goods or Chattels whatsoever, lying or being in or upon any Messuage, Lands, or Tenements,

No. 21.
8 Anne, c. 14.

which are or shall be leased for Life or Lives, Term of Years, at Will or otherwise, shall be liable to be taken by virtue of any Execution on any Pretence whatsoever, unless the Party at whose Suit the said Execution is sued out, (1.) shall before the Removal (2.) of such Goods from off the said Premisses, by virtue of such Execution or Extent, pay to the Landlord (3.) of the said Premisses or his Bailiff, all such Sum or Sums of Money as are or shall be due for Rent for the said Premisses at the Time (4.) of the taking such Goods or Chattels by virtue of such Execution: Provided the said Arrears of Rent do not amount to more than one Year's Rent; (5.) and in case the said Arrears shall exceed one Year's Rent, then the said Party, at whose Suit such Execution is sued out, paying the said Landlord or his Bailiff, one Year's Rent, may proceed to execute his Judgement, as he might have done before the making of this Act; and the Sheriff or other Officer (6.) is hereby impowered and required to levy and pay to the Plaintiff as well the Money so paid for Rent, as the Execution Money. (7.)

II. And be it further enacted by the Authority aforesaid, That in case any Lessee for Life or Lives, Term of Years, at Will or otherwise, of any Messuages, Lands, or Tenements, upon the Demise whereof any Rents are or shall be reserved, or made payable, shall, from and after the said first Day of *May*, fraudulently or clandestinely convey or carry off or from such demised Premisses, his Goods or Chattels, with Intent to prevent the Landlord or Lessor, from distraining the same for

If any Lessee, &c. shall fraudulently carry off Goods, &c.

(1.) The Act extends to an Execution at the Suit of a Defendant for Costs, notwithstanding the Direction at the End of the Section that the Sheriff shall pay the *Plaintiff* as well the Rent as the Execution Money; Henchett *v.* Kimpson, 2 Wils. 140.

(2.) A Bill of Sale ruled to be a Removal; West *v.* Hedges, Barnes 211.

(3.) The Statute only extends to the immediate Landlord, not to a ground Landlord; Master Bennet's Case, 2 Str. 787. An Executor or Administrator is intitled to the Benefit of the Statute, as to Arrears accrued in the Life-time of the Deceased; Palgrave *v.* Windham, 1 Str. 212.

(4.) The Act does not extend to Rent which accrues during the Continuance of the Sheriff in Possession; Hoskins *v.* Knight, 1 M. and S. 245.

(5.) Only one Year's Rent is to be paid, although there be two Executors; semble Dod *v.* Saxby, 2 Str. 1024.

(6.) The Bailiff of a Liberty is subject to the Provisions of the Act; Palgrave *v.* Windham, 1 Str. 212.

(7.) In order to render the Sheriff responsible for Non-compliance with the Act, there must be a Demand for the Rent, before the Removal, by the Party intitled; and a Demand by a Person to whom Administration is afterwards committed does not operate by Relation; Waring *v.* Dewberry, 2 Str. 97: see Smith *v.* Russell, 3 Taunt. 400. In case of Removal contrary to the Act, the Landlord may maintain an Action: in such Action the Want of alleging a Demand is helped by Verdict; Palgrave *v.* Windham, 1 Str. 212. It is not necessary to state in the Declaration the Particulars of the Lease, but if they are stated, and there is any Variance, it is fatal; Bristow *v.* Wright, Doug. 665. The Court from which the Execution issues will also give Relief on summary Application; West *v.* Hedges, Barnes 211; Twells *v.* Colville, Willes 377; Henchett *v.* Kimpson, 2 Wils. 140. If the Execution is overreached by an Act of Bankruptcy and Commission, the Sheriff, in an Action by the Assignees, can only avail himself of Payment to the Landlord, by proving that it was made before Notice of the Commission issued; Lee *v.* Lopes, 15 E. 230.

No. 21. 8 Anne, c. 14. the Lessor, &c. may within five Days after seize such Goods, &c. and sell the same as if they had been distrained.

Arrears of such Rent so reserved as aforesaid, it shall and may be lawful to and for such Lessor or Landlord, or any Person or Persons by him for that Purpose lawfully impowered, within the Space of five Days next ensuing such conveying away or carrying off such Goods or Chattels as aforesaid, to take and seize such Goods and Chattels wherever the same shall be found as a Distress for the said Arrears of such Rent; and the same to sell or otherwise dispose of, in such Manner, as if the said Goods and Chattels had actually been distrained by such Lessor or Landlord, in and upon such demised Premisses for such Arrears of Rent; any Law, Custom, or Usage to the contrary in any wise notwithstanding.

Proviso, such Lessor, &c. shall not seize any Goods, &c. which shall be bona fide sold before.

III. Provided nevertheless, That nothing in this Act contained shall extend, or be construed to extend, to impower such Lessor or Landlord to take or seize any Goods or Chattels as a Distress for Arrears of Rent, which shall be sold *bona fide*, and for a valuable Consideration, before such Seizure made; any Thing herein contained to the contrary notwithstanding.

Debt may be brought against Tenant for Life for Rent.

'IV. And whereas no Action of Debt lies against a Tenant for Life or Lives, for any Arrears of Rent, during the 'Continuance of such Estate for Life or Lives;' Be it enacted by the Authority aforesaid, That from and after the said first Day of *May* it shall and may be lawful for any Person or Persons, having any Rent in Arrear, or due upon any Lease or Demise (8.) for Life or Lives, to bring an Action or Actions of Debt for such Arrears of Rent, in the same Manner as they might have done, in case such Rent were due and reserved upon a Lease for Years.

Distresses liable to such Sales, and to be distributed, as by the Act 2 W. and M. ss 1. c. 5.

V. And it is hereby further enacted and declared by the Authority aforesaid, That all Distresses hereby impowered to be made as aforesaid, shall be liable to such Sales, and in such Manner, and the Monies arising by such Sales to be distributed in like Manner, as by an Act made in the second Year of the Reign of their late Majesties King *William* and *Queen Mary*, intituled, "An Act for enabling the Sale of Goods distrained for Rent, in case the Rent be not paid in reasonable Time," is in that Behalf directed and appointed.

Rent in Arrear upon a Lease for Life, &c. expired, may be distrained for after the Determination of the Lease.

'VI. And whereas Tenants *pur auter vie*, and Lessees for 'Years or at Will, frequently hold over the Tenements to them, 'demised, after the Determinatian of such Leases: And 'whereas after the Determination of such, or any other Leases, 'no Distress can by Law be made for any Arrears of Rent 'that grew due on such respective Leases before the Determination thereof;' It is hereby further enacted by the Authority aforesaid, That from and after the said first Day of *May* one thousand seven hundred and ten, it shall and may be lawful for any Person or Persons, having any Rent in Arrear, or due upon any Lease for Life or Lives, or for Years, or at Will, ended or determined, to distrain for such Arrears, after the Determination of the said respective Leases, in the same

(8.) This only extends to Cases between Landlord and Tenant. A Devisee of an Annuity cannot maintain Debt against the Devisee of the Land; Webb *v.* Jiggs, 4 M. and S. 113.

Manner as they might have done, if such Lease or Leases had not been ended or determined.

No. 21.
8 Anne, c. 14.

VII. Provided, That such Distress be made within the Space of six Kalendar Months (9.) after the Determination of such Lease, and during the Continuance of such Landlord's Title or Interest, and during the Possession of the Tenant (10.) from whom such Arrears became due.

Distress to be within six Months after the End of the Lease, and during the Landlord's Title and Tenant's Possession.

VIII. Provided always, and it is hereby enacted and declared by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend, to let, hinder, or prejudice her Majesty, her Heirs or Successors, in the levying, recovering, or seizing any Debts, Fines, Penalties, or Forfeitures, that are or shall be due, payable, or answerable to her Majesty, her Heirs or Successors; but that it shall and may be lawful for her Majesty, her Heirs and Successors, to levy, recover, and seize such Debts, Fines, Penalties, and Forfeitures, in the same Manner as if this Act had never been made; any Thing in this Act contained to the contrary thereof in any wise notwithstanding.

This Act shall not hinder the Queen, &c. to levy, &c. any Debts, Fines, &c. due to the Crown.

(9.) The Distress may be made during the Possession of the Executor of the Tenant, for the Rent accrued in the Life of his Testator, Braithwaite v. Cooksey, 1 H. B. 465.

(10.) A Distress may be made after the Expiration of the six Months during the Time that the Tenant, according to the Custom of the Country, has the way-going Crop on the Premises; Beavan v. Delahay, 1 H. B. 5; Lewis v. Harris, n. ibid.

## No. 22.

4 George II. c. 28.—An Act for the more effectual preventing Frauds committed by Tenants, and for the more easy Recovery of Rents, and Renewal of Leases.

No. 22.
4 George II. c. 28.

FOR securing to Lessors and Land Owners their just Rights, and to prevent Frauds frequently committed by Tenants, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in case any Tenant or Tenants for any Term of Life, Lives or Years, or other Person or Persons, who are or shall come into Possession of any Lands, Tenements or Hereditaments, by, from or under, or by Collusion with such Tenant or Tenants, shall wilfully (1.) hold over any Lands, Tenements or Hereditaments, after the Determination of such Term or Terms, and after Demand made, and Notice in Writing (2.) given, for deliver-

Persons holding over Lands, &c. after Expiration of Leases, to pay double the yearly Value.

(1.) A Tenant holding over under a fair Claim of Right is not within the Act, although it be decided eventually that he has no Right; Wright v. Smith, 5 Espinasse, 203.

(2.) The Notice to quit, given previous to the Expiration of the Term, is a sufficient Demand; Cutting v. Derby, 2 Bl. 1074; Wilkinson v. Colley, 5 Bur. 2694: and the Right to recover thereon is not waved by giving a

No. 22. 4 George II. c. 28.

ing the Possession thereof, by his or their Landlords or Lessors, or the Person or Persons to whom the Remainder or Reversion of such Lands, Tenements or Hereditaments shall belong, his or their Agent (3.) or Agents thereunto lawfully authorized; then and in such Case such Person or Persons so (4.) holding over, shall, for and during the Time he, she, and they shall so hold over, or keep the Person or Persons intitled (5.) out of Possession of the said Lands, Tenements, and Hereditaments, as aforesaid, pay to the Person or Persons so kept out of Possession, their Executors, Administrators or Assigns, at the Rate of double the yearly Value (6.) of the Lands, Tenements, and Hereditaments so detained, for so long Time as the same are detained, to be recovered in any of his Majesty's Courts of Record, by Action of Debt, (7.) whereunto the Defendant or Defendants shall be obliged to give special Bail, against the recovering of which said Penalty there shall be no Relief in Equity. (8.)

'II. And whereas great Inconveniences do frequently 'happen to Lessors and Landlords, in Cases of Re-entry for 'Nonpayment of Rent, by reason of the many Niceties that 'attend the Re-entries at Common Law; and forasmuch as 'when a legal Re-entry is made, the Landlord or Lessor must 'be at the Expence, Charge, and Delay, of recovering in 'Ejectment, before he can obtain the actual Possession of the 'demised Premisses; and it often happens that after such a 'Re-entry made, the Lessee or his Assignee, upon one or 'more Bills filed in a Court of Equity, not only holds out the

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second Notice after the Expiration of the first; Messenger *v.* Armstrong, 1 T. R. 53. A Notice to quit, "or I shall insist upon double Rent," does not give the Tenant an Option to continue the Possession, paying double Rent; Doe dem. Matthews *v.* Jackson, Doug. 175.

(3.) A Receiver appointed by the Court of Chancery in a Suit depending is a sufficient Agent to give Notice: Wilkinson *v.* Colley, 5 Bur. 2694.

(4.) If the Notice is given to a Woman who afterwards marries, the Action for not delivering up Possession may be maintained against the Husband, without any new Demand, and the Wife need not be joined; Lake *v.* Smith, 1 N. R. 174.

(5.) An Administratrix of an Executor cannot sustain an Action on this Act, although the Tenant has attorned to her without taking Administration, *de bonis non*, to the first Testator; Tingrey *v.* Brown, 1 B. and P. 310.

(6.) For the Distinction between this Act and 11 Geo. II. c. 19, subjecting the Tenant giving Notice to quit to double Rent, see 3 Bur. 2698.

(7.) One Tenant in Common may maintain this Action against the Defendant, who, after regular Notice to quit his Moiety, had turned off the Plaintiff's Sheep; Cutting *v.* Derby, 2 Bl. Rep. 1175. It by no means follows, that the Action could be maintained in such a Case against a Defendant for merely retaining Possession; which (being himself Tenant in Common in respect of the other Moiety) he is intitled to do. In an Action for double Value, and also for Use and Occupation, the Defendant paid the single Rent into Court upon the latter Count, and the Plaintiff by taking it out was held not to wave his Right under the former, so as to be subject to Nonsuit thereon, but that the Case ought to have gone to the Jury; Ryal *v.* Rich, 10 E. 48. The Action for double Value may be brought after a Judgment in Ejectment, for the holding over down to the Time of recovering the Possession; Soulsby *v.* Nevin, 9 E. 310.

(8.) This Section is copied, with some slight Variations, from the Irish Statute 11 Ann, c. 2, sec. 1. See 1 Gabbett, 468.

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'Lessor or Landlord by an Injunction, from recovering the 'Possession, but likewise, pending the said Suit, do run much 'more in Arrear, without giving any Security for the Rents 'due, when the said Re-entry was made, or which shall or do 'afterwards incur:' For remedy whereof, be it enacted by the Authority aforesaid, That in all Cases between Landlord and Tenant, from and after the twenty-fourth Day of *June* one thousand seven hundred and thirty-one, as often as it shall happen that one half Year's Rent shall be in Arrear, and the Landlord or Lessor, to whom the same is due, hath Right by Law to re-enter for the Nonpayment thereof, such Landlord or Lessor shall and may, without any formal Demand or Re-entry, serve a Declaration in Ejectment for the Recovery of the demised Premisses, or in case the same cannot be legally served, or no Tenant be in actual Possession of the Premisses, then to affix the same upon the Door of any demised Messuage, or in case such Ejectment shall not be for the Recovery of any Messuage, then upon some notorious Place of the Lands, Tenements or Hereditaments, comprized in such Declaration in Ejectment, and such Affixing shall be deemed legal Service thereof, which Service or Affixing such Declaration in Ejectment, shall stand in the Place and Stead of a Demand and Re-entry; and in case of Judgment against the casual Ejector, or Nonsuit for not confessing Lease, Entry and Ouster, it shall be made appear to the Court where the said Suit is depending, by Affidavit, (9.) or be proved upon the Trial, in case the Defendant appears, that half a Year's Rent was due before the said Declaration was served, and that no sufficient Distress (10.) was to be found on the demised Premisses countervailing the Arrears then due, and that the Lessor or Lessors in Ejectment had Power to re-enter; (11.)

On half a Year's Rent in Arrear, Landlord may re-enter, serving a Declaration of Ejectment.

(9.) In Doe *v.* Lewis, 1 Bur. 614, the Lessor having recovered in a former Ejectment under this Act, the Lessee, after a Lapse of several Years, brought a second Ejectment on the Title of his Lease; and the Proceedings in the first Ejectment being in all other Respects confessedly regular, he insisted that he was intitled to recover, because no Affidavit was produced which had been made in Conformity to the Act: and the Court held that it was not incumbent on the Landlord to prove the Regularity of all the Circumstances upon which his Judgment and Execution were founded; but that the Judgment must be taken to have been a right, regular and good one, as Nothing appeared to the contrary.

(10.) Where the Rent became due on the 25th. of March, the Demise was laid on the 2d. of May, it appeared that there was no sufficient Distress on *some* Day in May (the particular Day being left uncertain) and the Declaration served on the 6th. of June, no Evidence being given by the Defendant to repel the Inference of there being no sufficient Distress, by shewing a sufficient Distress up to the Day of the Demise, or on the 6th. of June (supposing that to be necessary) the Case of the Plaintiff, as to there being no sufficient Distress, was held to be sufficiently proved to bring the Case within the Act; Doe *v.* Smelt, 15 E. 286.

(11.) An Ejectment can only be maintained under the Statute in case there is no Distress, or at Common Law in case a Demand is made on the Day, with all requisite Formalities; Doe d. Forster *v.* Wandlass, 7 T. R. 117. It is not necessary to make any Demand in order to intitle a Plaintiff to recover in a Case brought in other Respects within the Act, although the Proviso for Re-entry be expressed to be in case of the Rent being in Arrear, *(being lawfully demanded)*; Doe d. Scholfield *v.* Alexander, 2 M. and S. 525 When,

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When Lessor in Ejectment may recover Judgment, &c.

then and in every such Case the Lessor or Lessors in Ejectment shall recover Judgment and Execution, in the same Manner as if the Rent in Arrear had been legally demanded, and a Re-entry made; and in case the Lessee or Lessees, his, her, or their Assignee or Assignees, or other Person or Persons claiming or deriving under the said Leases, shall permit and suffer Judgment to be had and recovered on such Ejectment and Execution to be executed thereon, without paying the Rent and Arrears, together with full Costs, and without filing any Bill or Bills for Relief in Equity, within six Calendar Months after such Execution executed; then and in such Case the said Lessee or Lessees, his, her, or their Assignee or Assignees, and all other Persons claiming and deriving under the said Lease, shall be barred and foreclosed from all Relief or Remedy in Law or Equity, other than by Writ of Error, for Reversal of such Judgment, in case the same shall be erroneous, and the said Landlord or Lessor shall from thenceforth hold the said demised Premisses discharged from such Lease; and if on such Ejectment Verdict shall pass for the Defendant or Defendants, or the Plaintiff or Plaintiffs shall be nonsuited therein, except for the Defendant or Defendants not confessing Lease, Entry and Ouster, then in every such Case such Defendant or Defendants shall have and recover, his, her, and their full Costs: Provided always, That nothing herein contained shall extend to bar the Right of any Mortgagee or Mortgagees of such Lease, or any Part thereof, who shall not be in Possession, so as such Mortgagee or Mortgagees shall and do, within six Calendar Months after such Judgment obtained, and Execution executed, pay all Rent in Arrear, and all Costs and Damages sustained by such Lessor, Person or Persons intitled to the Remainder or Reversion as aforesaid, and perform all the Covenants and Agreements, which on the Part and Behalf of the first Lessee or Lessees are and ought to be performed.

Not to bar the Right of any Mortgagee.

III. And be it further enacted by the Authority aforesaid, That in case the said Lessee or Lessees, his, her, or their

by the Terms of the Lease, there is a Proviso for Re-entry in case of Nonpayment, although not lawfully demanded, an Ejectment may be maintained without Reference to the Statute, the Demand being dispensed with by the express Terms of the Lease; and by Lord Mansfield—"The Act of 4 Geo. II. is very perplexed, but the Meaning certainly only is, that where there is no Stipulation in the Lease for Entry without Demand, you may notwithstanding enter without Demand, provided six Months' Rent is in Arrear, and there is not a sufficient Distress; otherwise, in such Cases you must make a Demand;" Goodright d. Hare *v.* Cater, Doug. 478. It is always desirable that the Proviso should be for Re-entry, although the Rent be not demanded, and that no Mention should be made of there being no sufficient Distress; and this would be no essential Prejudice to the Lessee, as in case there is a sufficient Distress, it could be disposed of to the most Advantage under his own Directions, and there can be no Doubt that he would be relieved from the Forfeiture, *if not at Law, at least in Equity*, by Payment according to the Terms of the Act. In Doe d. West *v.* Davis, 7 E. 363, it seems to be held, that the Want of sufficient Distress was not requisite in order to bring a Case within the Statute. But the Report is in this respect not very clear; and the supposed Doctrine seems contrary both to the Case of Doe *v.* Wandlass, and to the [illegible] Language of the Act.

Assignee or Assignees, or other Person or Persons claiming any Right, Title or Interest, in Law or Equity, of, in, or to the said Lease, shall, within the Time aforesaid, file one or more Bill or Bills, for Relief in any Court of Equity, such Person or Persons shall not have or continue any Injunction, against the Proceedings at Law on such Ejectment, unless he, she, or they do or shall, within forty Days next after a full and perfect Answer shall be filed by the Lessor or Lessors of the Plaintiff in such Ejectment, bring into Court, and lodge with the proper Officer such Sum and Sums of Money as the Lessor or Lessors of the Plaintiff in the said Ejectment shall, in his, her, or their Answer, swear to be due and in Arrear, over and above all just Allowances, and also the Costs taxed in the said Suit, there to remain till the Hearing of the Cause, or to be paid out to the Lessor or Landlord on good Security, subject to the Decree of the Court; and in case such Bill or Bills shall be filed within the Time aforesaid, and after Execution is executed, the Lessor or Lessors of the Plaintiff shall be accountable only for so much and no more, as he, she, or they shall really and *bona fide*, without Fraud, Deceit or wilful Neglect, make of the demised Premises from the Time of his, her, or their entring into the actual Possession thereof, and if what shall be so made by the Lessor or Lessors of the Plaintiff, happen to be less than the Rent reserved on the said Lease, then the said Lessee or Lessees, his, her, or their Assignee or Assignees, before he, she, or they shall be restored to his, her, or their Possession or Possessions, shall pay such Lessor or Lessors, or Landlord or Landlords, what the Money so by them made, fell short of the reserved Rent, for the Time such Lessor or Lessors of the Plaintiff, Landlord or Landlords, held the said Lands.

No. 29. 4 George II. c. 28.

Lessees filing Bill in Equity, not to have an Injunction against Proceeding at Law, &c.

IV. Provided always, and be it further enacted by the Authority aforesaid, That if the Tenant or Tenants, his, her, or their Assignee or Assignees, do or shall at any Time before the Trial (12.) in such Ejectment, pay or tender to the Lessor or Landlord, his Executors or Administrators, or his, her, or their Attorney in that Cause, or pay into the Court where the same Cause is depending, all the Rent and Arrears, together with the Costs, then and in such Case, all further Proceedings on the said Ejectment shall cease and be discontinued: and if such Lessee or Lessees, his, her, or their Executors, Administrators or Assigns, shall, upon such Bill filed as aforesaid, be relieved in Equity, he, she, and they shall have, hold and enjoy the demised Lands, according to the Lease thereof made, without any new Lease to be thereof made to him, her, or them.

Tenant paying all Rent with Costs, Proceedings to cease.

'V. And whereas the Remedy for recovering Rents 'Seck, Rents of Assize and Chief Rents, are tedious and 'difficult,' Be it therefore enacted by the Authority aforesaid, That from and after the twenty-fourth Day of *June* one thou-

(12.) The Court refused to relieve after Trial; Doe d. West *v.* Davis, 7 E. 363.

No. 22.
4 George II. c. 22.

Method of recovering Seck Rents, &c.

sand seven hundred and thirty-one, all and every Person or Persons, Bodies Politick and Corporate, shall and may have the like Remedy by Distress, and by impounding and selling the same, in Cases of Rents Seck, Rents of Assize and Chief Rents, which have been duly answered or paid for the Space of three Years, within the Space of twenty Years (13.) before the first Day of this present Session of Parliament, or shall be hereafter created, as in case of Rent reserved upon Lease; any Law or Usage to the contrary notwithstanding.

'VI. And whereas many Persons hold considerable 'Estates by Leases for Lives or Years, and lease out the same 'in Parcels to several Under Tenants: And whereas many of 'those Leases cannot by Law be renewed without a Surrender 'of all the Under Leases derived out of the same, so that it is in 'the Power of any such Under Tenants to prevent or delay 'the Renewing of the principal Lease, by refusing to surren-'der their Under Leases, notwithstanding they have covenan-'ted so to do, to the great Prejudice of their immediate Land-'lords the first Lessees:' For preventing such Inconveniences, and for making the Renewal of Leases more easy for the future, Be it enacted by the Authority aforesaid, That in case any Lease shall be duly surrendered in order to be renewed, and a new Lease made and executed by the chief Landlord or Landlords, the same new Lease shall without a Surrender of all or any the Under Leases be as good and valid to all Intents and Purposes as if all the Under Leases derived thereout had been likewise surrendered at or before the taking of such new Lease; and all and every Person and Persons in whom any Estate for Life or Lives or for Years, shall from Time to Time be vested by Virtue of such new Lease, and his, her, and their Executors and Administrators, shall be intitled to the Rents, Covenants and Duties, and have like Remedy for Recovery thereof, and the Under Lessees shall hold and enjoy the Messuages, Lands and Tenements, in the respective Under Leases comprised, as if the original Leases, out of which the respective Under Leases are derived, had been still kept on foot and continued, and the Chief Landlord and Landlords shall have and be intitled to such and the same Remedy, by Distress or Entry in and upon the Messuages, Lands, Tenements and Hereditaments comprized in any such Under Lease, for the Rents and Duties reserved by such new Lease, so far as the same exceed not the Rents and Duties reserved in the Lease, out of which such Under Lease was derived, as they would have had in case such former Lease had been still continued, or as they would have had in case the respective Under Leases had been renewed under such new principal Lease; any Law, Custom or Usage to the contrary hereof notwithstanding.

Chief Leases may be renewed without surrendering all the Under Leases.

'VII. Provided always, That nothing in this Act contained shall extend to that Part of *Great Britain* called *Scotland*.

Not to extend to Scotland.

(13.) See Bradbury v. Wright, Doug. 627.

## No. 23.

**11 George II. c. 19.—An Act for the more effectual securing the Payment of Rents, and preventing Frauds by Tenants.**

No. 23. 11 George II. c. 19.

Preamble.

'WHEREAS the several Laws heretofore made for the better Security of Rents and to prevent Frauds committed by Tenants, have not proved sufficient to obtain the good Ends and Purposes designed thereby, but rather the fraudulent Practices of Tenants, and the Mischief intended by the said Acts to be prevented, have of late Years increased, to the great Loss and Damage of their Lessors or Landlords;' For Remedy whereof, may it please your most Excellent Majesty, that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth Day of *June*, in the Year of our Lord one thousand seven hundred and thirty-eight, in case any Tenant or Tenants, Lessee or Lessees, for Life or Lives, Term of Years, at Will, Sufferance, or otherwise, of any Messuages, Lands, Tenements, or Hereditaments, upon the Demise or Holding whereof any Rent is or shall be reserved, due, or made payable, shall fraudulently or clandestinely convey away, or carry off or from such Premisses, his, her or their Goods or Chattels, to prevent the Landlord or Lessor, Landlords or Lessors, from distraining the same for Arrears of Rent so reserved, due, or made payable; (1.) it shall and may be lawful to and for every Landlord or Lessor, Landlords or Lessors, within that Part of *Great Britain* called *England*, Dominion of *Wales*, or the Town of *Berwick upon Tweed*, or any Person or Persons by him, her, or them for that Purpose lawfully empowered, within the Space of thirty Days next ensuing such conveying away or carrying off such Goods or Chattels as aforesaid, to take and seize such Goods and Chattels, wherever the same shall be found, as a Distress for the said Arrears of Rent; and the same to sell, or otherwise dispose of, in such Manner as if the said Goods and Chattels had actually been distrained by such Lessor or Landlord, Lessors or Landlords, in and upon such Premisses, for such Arrears of Rent; any Law, Custom, or Usage to the contrary in any wise notwithstanding.

Landlords may distrain and sell Goods fraudulently carried off the Premisses within 30 Days, unless sold to any Person not privy to the Fraud.

II. Provided always, That no Landlord or Lessor, or other Person intitled to such Arrears of Rent, shall take or seize any such Goods or Chattels as a Distress for the same, which shall be sold *bona fide*, and for a valuable Consideration,

(1.) In order to justify the Landlord distraining under this Act, the Removal must have taken place after the Rent became due, and must have been secret, and not open and in the Face of Day; Watson v. Mann, 3 Esp. Rep. 16.

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before such Seizure made, to any Person or Persons not privy to such Fraud as aforesaid; any thing herein contained to the contrary notwithstanding.

Penalty on the said Fraud, or assisting thereto.

III. And to deter Tenants from such fraudulent conveying away their Goods and Chattels, and others from wilfully aiding or assisting therein, or concealing the same; Be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June*, if any such Tenant or Lessee shall fraudulently remove and convey away his or her Goods or Chattels as aforesaid, or if any Person or Persons shall wilfully and knowingly aid or assist any such Tenant or Lessee in such fraudulent conveying away or carrying off of any Part of his or her Goods or Chattels, or (2.) in concealing the same; all and every Person and Persons so offending, shall forfeit and pay to the Landlord or Landlords, Lessor or Lessors, from whose Estate such Goods and Chattels were fraudulently carried off as aforesaid, double the Value of the Goods (3.) by him, her, or them respectively carried off or concealed as aforesaid; to be recovered by Action of Debt in any of his Majesty's Courts of Record at *Westminster*, or in the Courts of Session in the Counties Palatine of *Chester*, *Lancaster* or *Durham* respectively, or in the Courts of Grand Sessions in *Wales*, wherein no Essoin, Protection, or Wager of Law shall be allowed, nor more than one Imparlance.

If the Goods exceed not the Value of 50l. Landlords to have Recourse to two Justices.

IV. Provided always, and be it enacted by the Authority aforesaid, That where the Goods and Chattels so fraudulently carried off or concealed shall not exceed the Value of fifty Pounds, it shall and may be lawful for the Landlord or Landlords, from whose Estate such Goods or Chattels were removed, his, her, or their Bailiff, Servant, or Agent, in his, her, or their Behalf, to exhibit a Complaint in Writing (4.) against such Offender or Offenders, before two or more Justices of the Peace of the same County, Riding, or Division of such County, residing near the Place whence such Goods and Chattels were removed, or (5.) near the Place where the same were found, not being interested in the Lands or Tenements whence such Goods were removed; who may summon the Parties concerned, examine the Fact, and all proper Witnesses, upon Oath, or if any such Witness be one of the People called *Quakers*, upon Affirmation required by Law; and in a summary Way determine, whether such Person or Persons be guilty of the Offence, with which he or they are charged; and to enquire in like Manner of the Value of the Goods and Chattels by him, her, or them respectively so fraudulently carried off or

(2.) In Rex *v.* Middlehurst, 1 Bur. 399, an Order of Justices, founded upon the next Section, for assisting in fraudulently removing or concealing, was held good.

(3.) In an Action founded upon this Provision, a Variance in stating the Amount of the Rent in arrear is not material; Gwinet *v.* Philips, 3 T. R. 643.

(4.) It need not be upon Oath; Rex *v.* Bissex, Burn, Tit. *Distress*.

(5.) If Goods are removed from one County into another, the Proceeding may be before Justices of either; semble R. *v.* Morgan, Caldec. 156.

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concealed as aforesaid; and, upon full Proof of the Offence, by Order (6.) under their Hands and Seals, the said Justices of Peace may and shall adjudge the Offender or Offenders to pay double the Value of the said Goods and Chattels to such Landlord or Landlords, his, her, or their Bailiff, Servant, or Agent, at such Time as the said Justices shall appoint: And in case the Offender or Offenders, having Notice of such Order, shall refuse or neglect so to do, may and shall, by Warrant under their Hands and Seals, levy the same by Distress and Sale of the Goods and Chattels of the Offender or Offenders; and for want of such Distress, may commit the Offender or Offenders to the House of Correction, there to be kept to hard Labour without Bail or Mainprize for the Space of six Months, unless the Money so ordered to be paid as aforesaid shall be sooner satisfied.

Appeal from them to the Quarter-Sessions.

V. Provided also, That it shall and may be lawful for any Person, who thinks himself aggrieved by such Order of the said two Justices, to appeal to the Justices of Peace at their next General or Quarter Sessions to be held for the same County, Riding, or Division of such County, who may and shall hear and determine such Appeal, and give such Costs to either Party as they shall think reasonable, whose Determination therein shall be final.

The two Justices Order, on such Appeal, not to be executed.

VI. Provided also, That where the Party appealing shall enter in a Recognizance with one or two sufficient Surety or Sureties in double the Sum so ordered to be paid, with Condition to appear at such General or Quarter Sessions, the Order of the said two Justices shall not be executed against him in the mean Time.

Landlords may break open Houses to seize Goods fraudulently secured therein;

VII. And be it further enacted by the Authority aforesaid, That where any Goods or Chattels fraudulently or clandestinely conveyed or carried away by any Tenant or Tenants, Lessee or Lessees, his, her, or their Servant or Servants, Agent or Agents, or other Person or Persons aiding or assisting therein, shall be put, placed, or kept in any House, Barn, Stable, Out-house, Yard, Close or Place locked up, fastened, or otherwise secured, so as to prevent such Goods or Chattels from being taken and seized as a Distress for Arrears of Rent; it shall and may be lawful for the Landlord or Landlords, Lessor or Lessors, his, her, or their Steward, Bailiff, Receiver or other Person or Persons impowered to take and seize, as a Distress for Rent, such Goods and Chattels (first calling to his, her, or their Assistance the Constable, Headborough, Borsholder, or other Peace Officer of the Hundred, Borough,

(6.) In R v. Bissex, Burn, Tit. *Distress*, it was ruled that a Proceeding under this Act is an Order, and not a Conviction; and that therefore it was not necessary to set out the Evidence; and several particular Objections to the Form of the Order, in respect of the Particulars necessary to be stated, were overruled. Upon the same Distinction between an Order and a Conviction, it was ruled in the Case of R. v. Middleton, mentioned in the Note to the last Section, that the Offence might be set out disjunctively; but in R. v. Morgan, Caldec. 156, the Proceeding seems to be treated as a Conviction.

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Parish, District or Place, where the same shall be suspected to be concealed, who are hereby required to aid and assist therein: and (in case of a Dwelling-house Oath being also first made before some Justice of the Peace of a reasonable Ground to suspect that such Goods or Chattels are therein) in the Day-time, to break open and enter into such House, Barn, Stable, Out-house, Yard, Close and Place, and to take and seize such Goods and Chattels for the said Arrears of Rent, as he, she or they might have done by virtue of this or any former Act, if such Goods and Chattels had been put in any open Field or Place.

and may distrain Stock or Cattle on the Premises, for Arrears of Rent.

VIII. And be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June* which shall be in the Year of our Lord one thousand seven hundred and thirty-eight, it shall and may be lawful to and for every Lessor or Landlord, Lessors or Landlords, or his, her or their Steward, Bailiff, Receiver or other Person or Persons impowered by him, her or them, to take and seize, as a Distress for Arrears of Rent, any Cattle or Stock of their respective Tenant or Tenants, feeding or depasturing upon any Common, appendant or appurtenant, or any ways belonging to all or any Part of the Premises demised or holden; and also to take and seize all Sorts of Corn and Grass, Hops, Roots, Fruits, Pulse, or other Product whatsoever, which shall be growing on any Part of the Estates so demised or holden, as a Distress for Arrears of Rent; and the same to cut, gather, make, cure, carry and lay up, when ripe, in the Barns, or other proper Place on the Premisses so demised or holden; and in case there shall be no Barn or proper Place on the Premisses so demised or holden, then in any other Barn or proper Place which such Lesssor or Landlord, Lessors or Landlords shall hire or otherwise procure for that Purpose, and as near as may be to the Premisses; and in convenient Time to appraise, sell or otherwise dispose of the same, towards Satisfaction of the Rent for which such Distress shall have been taken, and of the Charges of such Distress, Appraisement and Sale, in the same Manner as other Goods and Chattels may be seized, distrained and disposed of; and the Appraisement thereof to be taken when cut, gathered, cured and made, and not before.

Tenants to have Notice of the Place where the Distress is lodged.

IX. Provided always, That Notice of the Place where the Goods and Chattels so distrained shall be lodged or deposited, shall, within the Space of one Week after the lodging or depositing thereof in such Place, be given to such Lessee or Tenant, or left at the last Place of his or her Abode; and that if after any Distress for Arrears of Rent so taken, of Corn, Grass, Hops, Roots, Fruits, Pulse, or other Product, which shall be growing as aforesaid, and at any Time before the same shall be ripe and cut, cured or gathered, the Tenant or Lessee, his or her Executors, Administrators, or Assigns, shall pay, or cause to be paid to the Lessor or Landlord, Lessors

Distress of Corn, &c. to cease, if Rent be paid before it is cut.



or Landlords, for whom such Distress shall be taken, or to the Steward or other Person usually employed to receive the Rent of such Lessor or Lessors, Landlord or Landlords, the whole Rent which shall be then in Arrear, together with the full Costs and Charges of making such Distress, and which shall have been occasioned thereby; that then, and upon such Payment or lawful Tender thereof actually made, whereby the End of such Distress will be fully answered, the same and every Part thereof shall cease; and the Corn, Grass, Hops, Roots, Fruits, Pulse, or other Product so distrained, shall be delivered up to the Lessee or Tenant, his or her Executors, Administrators or Assigns; any thing herein before contained to the contrary notwithstanding. No. 23. 11 George II. c. 19.

'X. And whereas great Difficulties and Inconveniences 'frequently arise to Landlords and Lessors and other Persons 'taking Distresses for Rent, in removing the Goods and 'Chattels or Stock distrained off the Premisses, in Cases 'where by Law they may not be impounded and secured 'thereupon; and also to the Tenants themselves many Times, 'by the Damage unavoidably done to such Goods and Chattels, 'or Stock, in the Removal thereof;' Be it enacted by the Authority aforesaid, That from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-eight, it shall and may be lawful to and for any Person or Persons lawfully taking any Distress for any Kind of Rent, to impound, or otherwise secure the Distress so made, of what Nature or Kind soever it may be, in such Place, or on such Part (7.) of the Premisses chargeable with the Rent, as shall be most fit and convenient for the impounding and securing such Distress: and to appraise, sell and dispose of the same upon the Premisses, in like Manner, and under the like Directions and Restraints to all Intents and Purposes, as any Person taking a Distress for Rent may now do off the Premisses, by Virtue of an Act made in the second Year of the Reign of King *William* and Queen *Mary*, intituled, "An Act for enabling the Sale of Goods distrained for Rent, in case the Rent be not paid in a reasonable Time;" or of one other Act made in the fourth Year of his present Majesty, intituled, "An Act for the more effectual preventing Frauds committed by Tenants, and for the more easy Recovery of Rents, and Renewal of Leases;" and that it shall and may be lawful to and for any Person or Persons whatsoever, to come and go to and from such Place or Part of the said Premisses, where any Distress for Rent shall be impounded and secured as aforesaid, in order to view, appraise and buy, and also in order to carry off or remove the same, on account of the Purchaser thereof; and that if any Pound-breach or Rescous shall be

Distresses may be secured, and sold on the Premises.

2 W. & M. c. 5.

4 Geo. 2. c. 28.

(7.) See Washborn v Black, 11 E. 405. n. in which the Law was admitted to be, that without Consent the Distrainer ought either to have put the Goods all into one Room, and kept Possession of that only, or to have removed the Goods out of the House; but very slight Evidence was admitted of Consent.

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made of any Goods or Chattels, or Stock distrained for Rent, and impounded or otherwise secured by Virtue of this Act, the Person or Persons aggrieved thereby shall have the like Remedy, as in Cases of Pound-breach or Rescous is given and provided by the said Statute. (8.)

'XI. And whereas the Possession of Estates in Lands, 'Tenements and Hereditaments is rendered very precarious 'by the frequent and fraudulent Practice of Tenants, in attorn- 'ing to Strangers, who claim Title to the Estates of their re- 'spective Landlord or Landlords, Lessor or Lessors, who by 'that Means are turned out of Possession of their respective 'Estates, and put to the Difficulty and Expence of recovering 'the Possession thereof by Actions or Suits at Law;' For Remedy thereof be it enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June* in the Year of our Lord one thousand seven hundred and thirty-eight, all and every such Attornment and Attornments of any Tenant or Tenants of any Messuages, Lands, Tenements or Hereditaments, within that Part of *Great Britain* called *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, shall be absolutely null and void to all Intents and Purposes whatsoever; and the Possession of their respective Landlord or Landlords, Lessor or Lessors, shall not be deemed or construed to be any wise changed, altered or affected by any such Attornment or Attornments: Provided always, That nothing herein contained shall extend to vacate or affect any Attornment made pursuant to and in consequence of some Judgment at Law, or Decree or Order of a Court of Equity, or made with the Privity and Consent of the Landlord or Landlords, Lessor or Lessors, or to any Mortgagee after the Mortgage is become forfeited.

Attornment of Tenants, void.

Exception.

'XII. And whereas great Inconveniences have fre- 'quently happened to Landlords by their Tenants secreting 'Declarations in Ejectment, which have been delivered to 'them, or by refusing to appear to such Ejectments, or to 'suffer their Landlords to take upon them the Defence there- 'of,' Be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June* one thousand seven hundred and thirty-eight, every Tenant, to whom any Declaration in Ejectment shall be delivered for any Lands, Tenements or Hereditaments, in that Part of *Great Britain* called *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, shall forthwith give Notice thereof to his or her Landlord or Landlords, or his, her or their Bailiff or Receiver, under Penalty of forfeiting the Value of three Years improved or Rack Rent of the Premisses so demised or holden in the Possession of such Tenant, to the Person of whom he or she holds: to be recovered by Action of Debt to be brought in any of his Majesty's Courts of Record at *Westminster*, or in the Counties Palatine of *Chester*, *Lancaster*, and *Durham* respec-

Against Tenants secreting Ejectments.

(8.) The Right of Replevin is not taken away by Appraisement or Removal after the five Days allowed, until actual Sale; Jacobs *v.* King, 5 Taunt. 451.

tively, or in the Courts of Grand Sessions in *Wales*; wherein no Essoin, Protection or Wager of Law shall be allowed, nor any more than one Imparlance. (9.)

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Landlord impowered to make himself Defendant by joining with the Tenants, &c.

XIII. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for the Court where such Ejectment shall be brought, to suffer the Landlord or Landlords to make him, her or themselves Defendant or Defendants, by joining with the Tenant or Tenants, to whom such Declaration in Ejectment shall be delivered, in case he or they shall appear: but in case such Tenant or Tenants shall refuse or neglect to appear, Judgment shall be signed against the casual Ejector for want of such Appearance; but if the Landlord or Landlords of any Part of the Lands, Tenements or Hereditaments, for which such Ejectment was brought, shall desire to appear by himself or themselves, and consent to enter into the like Rule that by the Course of the Court the Tenant in Possession in case he or she had appeared ought to have done; then the Court where such Ejectment shall be brought shall and may permit such Landlord or Landlords so to do, and order a Stay of Execution upon such Judgment against the casual Ejector, until they shall make further Order therein. (10.)

(9.) In Buckley *v.* Buckley, 1 T. R. 147, it was held that this Clause did not apply to the Case of a Tenant to whom an Ejectment had been delivered at the Suit of the Mortgagee of the Landlord. The Court said that the Statute only extended to Cases where Ejectments were brought, which were inconsistent with the Landlord's Title. They observed likewise that the Ejectment was brought for the Purpose of compelling the Tenant to attorn to the Mortgagee, which the Act expressly permitted him to do. The Notion of Ejectments for the Purpose of compelling Tenants to attorn is materially altered since this Decision.

(10.) It appears by the Case of Fairclaim ex dem. Fowler *v.* Shamtitle, 3 Burr. 1290, that a Practice had prevailed of admitting Landlords to defend previous to this Statute, and several Cases of the Kind are referred to in Adams's Treatise on Ejectments, Chap. 8, the Questions in which related to the particular Character of the Parties applying to be admitted. In the first Case on the Subject, Roe d. Lock *v.* Doe, Barnes 193, the Question was between different Devisees claiming under conflicting Wills of the Lessor, and it was held that the Court had no Jurisdiction to admit any Person to defend an Ejectment instead of the Defendant, except the Landlord only; and who, it is said, is a Landlord within the Act; not every Person claiming Title, but one who is in some Degree of Possession, one receiving Rent, &c.: the Clause of Forfeiture by a Tenant, if he does not give Notice of Declaration to his Landlord, proves this.

In Adams on Ejectment this Doctrine is said to have been reprobated by Lord Mansfield, in the Case of Fairclaim and Shamtitle above alluded to; but I do not see that there any such Disapprobation is particularly expressed; and I apprehend that the Principle of the Decision in Roe *v.* Doe is that which now prevails in Practice, although some of the Expressions are not literally correct; and that where there is a valid and undisputed Demise, the Question as to which of two adverse Claimants is entitled to stand in the Character of Landlord, and to receive the Rents, cannot in any Case be tried in Ejectment. In Fairclaim *v.* Shamtitle, the Ejectment was brought by a Person claiming as Heir; and the Lords of the Manor, claiming by Escheat *pro Defectu Hæredis*, applied to be admitted as Landlords. After much Discussion, it was entered by Consent, that the Lord of the Manor should bring an Ejectment, which the Person claiming as Heir should defend. Lord Mansfield, after the Rule had been drawn up, declared that he was clear that

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Rents how to be recovered, where the Demises are not by Deed.

XIV. And to obviate some Difficulties that many Times occur in the Recovery of Rents, where the Demises are not by Deed, Be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June*, it shall and may be lawful to and for the Landlord or Landlords, where the Agreement is not by Deed, to recover a reasonable Satisfaction for the Lands, Tenements or Hereditaments, held or occupied by the Defendant or Defendants, in an Action on the Case, (11.) for the Use and Occupation of what was so held or enjoyed; and if in Evidence on the Trial of such Action any Parol Demise or any Agreement (not being by Deed) (12.) whereon a certain Rent was reserved shall appear, the Plaintiff in such Action shall not therefore be nonsuited, but may

that Method was the proper Way of trying the Right upon the Merits: if there was really no Heir, then the Lord stood in the Place of the deceased; but if there was any Heir whatsoever, the Lord's Claim was at an End. The Court would have obliged him to come into some Method of trying the Right in a proper Issue; and that Method into which it was now put (his bringing an Ejectment) was the most proper Issue for the Purpose. If the Heir had refused, the Court would have permitted the Lord to defend, which would have given him the Benefit of Possession. If the Lord had refused to consent, the Court would have discharged the Rule. For certainly, when the sole Question turns upon who ought to be the Landlord to the Tenant in Possession, he should stand neuter, and his Possession avail neither: the Question ought to be tried between the Claimants. The Plaintiff must consent, else the other is admitted to defend: the other must consent, because to say that he is Landlord begs the Question intended to be tried." — For a Reason already stated, it seems clear that this View of the Subject cannot now prevail, whatever other Course may be taken in order to decide the Question of Title.

In Lovelock d. Norris *v.* Doncaster, 3 T. R. 783, an Application to defend as Landlord being made on Behalf of Devisees, which was opposed on the Ground of their having never been in Possession, Lord Kenyon said — "If the Person requiring to be made Defendant under the Act had stood in the Situation of immediate Heir to the Person last seised, or had been in the Relation of Remainder-man under the same Title as the original Landlord, I am of Opinion that he might have been permitted to defend as Landlord by virtue of the Directions of the Statute; but here the very Question in Dispute between the adverse Party and himself is, whether he is entitled to be Landlord or not? and therefore we are not authorized to extend the Provisions of the Statute to such a Case as this."

In Doe on the Demise of Hebblethwaite and others *v.* Roe, cited in a Note to the preceding Case, the Court permitted an Heir who had never been in Possession to come in and defend an Ejectment. The Father under whom he claimed died just before, having first obtained a similar Rule. But in this Case the Ejectment seems to have been brought by a Person claiming by Title paramount to that of the Person who made the Lease, and not to involve any Question between Parties respectively claiming under the admitted Title of the same Lessor.—In Doe d. Tilyard *v.* Cooper, 8 T. R. 645, the Mortgagee was admitted to defend jointly with the Morgagor; but this Case cannot be considered as arising upon the Statute, which applies only to the Relation of Landlord and Tenant.

(11.) The Action may be in Debt; Wilkins *v.* Wingate, 6 T. R. 62; Stroud *v.* Rogers, *n.* ibid. The Action of Debt does not depend upon this Statute; Barnard *v.* Duthy, 5 Taunt. 27.

(12.) Assumpsit will lie for Use and Occupation, although there is an Agreement under Seal, if such Agreement contain no Words of present Demise; Elliott *v.* Rogers, 4 Esp. 59. But semble this could not be admitted if there were any actual Covenant for Payment of the Rent.—Ed.

make use thereof as an Evidence of the *Quantum* of the Damages to be recovered. (13.) No. 23. 11 George II. c. 19.

'XV. And whereas where any Lessor or Landlord,

(13.) The Action may be maintained by a Grantee of an Annuity (who does not differ from any other Grantee of the Lessor, and therefore the Proposition may be stated as to Grantees generally, who have recovered in Ejectment) against a Tenant from year to year, for all Rent in his Hands, (which has accrued due subsequent to the Grant) at the Time of Notice by the Grantee, and down to the Demise in the Ejectment; Birch v. Wright, 1 T. R. 378. It may be maintained by the Trustees of one, of whose Title the Defendant had Notice of before Payment to the original Landlord, although he had not Notice of the legal Title of the Trustees; Lumley v. Hodgson, 16 E. 99. Against a Lessee, who permits another Person to occupy; Bull v. Sibbs, 8 T. R. 327. Against a Tenant who has become bankrupt, notwithstanding his Bankruptcy, and the Occupation of the Assignees when the Rent accrued; Boot v. Wilson, 8 E. 311: (but see Stat 49 Geo. III. c. 121, sec. 19, as to the Discharge of the Bankrupt where the Assignees accept of the Lease). Against a Tenant for Rent, after the Premises are burnt down, and no longer inhabited; Baker v. Holtpzaffell, 4 Taunt. 45.—It will not lie against a Person entering as Purchaser under a Contract of Sale, which is not completed on account of some Defect in the Vendor's Title; Kirtland v. Pounsett, 2 Taunt. 115 Against Assignees who take Possession on the Bankruptcy of the Tenant in the middle of the Year, for the Occupation of the Tenant, not proved to be at their Request; Nash v. Tatlock, 2 H. B. 318. In Redpath v. Roberts, 3 Esp. 225, Lord Kenyon held, that if the Tenant abandon the Premises without Notice, the Landlord is not precluded from recovering the subsequent Rent by putting up a Bill at the Window, and endeavouring to procure another Tenant.

The general Proposition that a Tenant cannot dispute his Landlord's Title, is established by several Cases, and is now received as an undisputed Rule of Law. In Cooke v. Loxley, 5 T. R. 4, a Tenant of Part of the Glebe of a Parish, who had entered under a former Incumbent, and paid Rent to the Successor, was not, in an Action for Rent subsequently incurred, allowed to dispute the Title of the Incumbent on the Ground of Simony, although he alledged that, at the Time of the Payment, he was ignorant of that Objection. In England v. Slade, 4 T. R. 682, Lord Kenyon said, and the other Judges agreed, that it was competent to the Defendant to shew that the Lessor's Title had expired, and that he had no Right to turn him out of Possession; but in Balls v Westwood, 2 Camp. N. P. 11, being an Action for Use and Occupation of a Copyhold Estate, the Defendant offered to shew that the Estate had been seized or forfeited to the Lord by Process out of the Court Baron, and that, having Notice from the Steward to pay the Rent to the Lord, he had done so ever since; which Lord Ellenborough would not allow, saying, "You cannot controvert the Title of the Person under whom you continue to hold. The Security of Landlords would be infinitely endangered if such a Proceeding were permitted. Had the Defendant, upon the Premises being seized by the Lord of the Manor, disclaimed holding of the Plaintiff, and entered afresh under the new Landlord, we might now enquire into the Validity of the Seizure, and decide who is legally entitled to the Premises; but the same Tenancy continues which was created by the original Demise, and the Tenant must still pay Rent to the Lessor, whose Title he then recognized."

In an Action for Use and Occupation, it is not necessary to set forth the Particulars of the Demise; Wilkins v. Wingate, 6 T. R. 62, (in Debt; but the same holds good in Assumpsit); or to state the Place where the Premises lie; King v. Frazer, 6 T. R. 62.

[In this Case it was said that the Inconvenience resulting to the Defendant from this general Mode of declaring was remedied by permitting the Defendant to call for Bill of Particulars: but if the Doctrine was founded on no better Reason than that, it would be very unsatisfactory, as it can never be admitted that the Rules of Pleading, which are Part of the Law of the Land, can be varied by a modern Practice, introduced upon the mere Authority of the Courts.]

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'having only an Estate for Life in the Lands, Tenements or 'Hereditaments demised, happens to die before or on the Day, 'on which any Rent is reserved, or made payable, such Rent, 'or any Part thereof, is not by Law recoverable by the Execu- 'tors or Administrators of such Lessor or Landlord; nor is the 'Person in Reversion entitled thereto, any other than for the 'Use and Occupation of such Lands, Tenements or Heredita- 'ments, from the Death of the Tenant for Life; of which Ad- 'vantage hath been often taken by the Under-tenants, who 'thereby avoid paying any Thing for the same;' For Remedy whereof be it enacted by the Authority aforesaid, That from and after the twenty-fourth Day of *June*, one thousand seven hundred and thirty-eight, where any Tenant for Life shall happen to die before or on the Day, on which any Rent was reserved or made payable upon any Demise or Lease of any Lands, Tenements, or Hereditaments, which determined on the Death of such Tenant for Life, that the Executors or Administrators of such Tenant for Life shall and may, in an Action on the Case, recover of and from such Under-tenant or Under-tenants of such Lands, Tenements, or Hereditaments, if such Tenant for Life die on the Day on which the same was made payable the whole, or if before such Day then a Proportion, of such Rent according to the Time such Tenant for Life lived, of the last Year, or Quarter of a Year, or other Time in which the said Rent was growing due as aforesaid, making all just Allowances or a proportionable Part thereof respectively.(14.)

Rents recoverable from Under-tenant, where Tenants for Life die before the Rent is payable.

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That Debt for Use and Occupation is not local, was also decided in Egler *v.* Marsden, 5 Taunt. 25.

Where the Premises were stated to be situate in a Parish which did not exist, Lord Kenyon held it a fatal Variance; Wilson *v.* Clark, 1 Esp. R. 273; but in Kirtland *v.* Pounsett, 1 Taunt. 570, the Declaration being for Use and Occupation of Premises in the Parish of Lambeth, the real Name of the Parish being St. Mary Lambeth, although the Parish was well known by the Name of Lambeth, the Variance was held immaterial. The Question of Variance, where the Declaration is tied up to a particular Description of Locality, does not seem to be at all affected by the Decision, that no Allegation of Locality is necessary; although the contrary may perhaps be inferred from the Observations of Lawrence J. in the Case last referred to.

(14.) There is no Rule of the Law more certain and notorious, than that an entire Contract cannot be apportioned; and the Doctrine which existed upon the Subject previous to the passing of the Act was no more than the Application of that general Rule which still subsists, notwithstanding many Efforts to controul it by mere judicial Authority. The Hardship upon Landlords in Cases previous to the Statute, or to which the Statute does not extend, has been often expatiated upon; but the Inconvenience sustained by a Tenant, by the sudden Determination of his Interest, seems to have been altogether overlooked; and I am not aware that there was any great Reason for complaining of a Rule, the Effect of which could always be obviated by express Stipulations. Upon this Ground I feel by no means disposed to regard with particular Estimation the Cases in which an Effort has been made to carry the Provisions of the Statute, by analogical Reasoning, beyond their fair and natural Import and Construction.

In Paget *v.* Gee, Burn, Tit. *Distress*, Ambler, 198, the Lessee of Tenant in Tail, whose Estate determined in the Middle of a Half-year, paid the entire Rent to the Remainder-man in Fee; and Lord Hardwicke decided that the Executors of the Tenant in Tail were entitled to an Apportionment.

'XVI. And whereas Landlords are often great Sufferers 'by Tenants running away in Arrear, and not only suffering 'the demised Premises to lie uncultivated without any Distress No. 23. 11 George II. c. 19.

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His Lordship expressed an Opinion that Tenant in Tail, after Possibility of Issue extinct, or Tenant for Years, determinable upon Lives, was within the Act; gave no absolute Opinion as to the Case of Tenant in Tail, but said, "As to the Equity arising from the Statute, I know no better Rule than this, that *Equitas sequitur Legem.* Where Equity finds a Rule of Law agreeable to Conscience, it pursues the Sense of it to analogous Cases. If it does so as to the Maxims of the Common Law, why not as to the Reasons of Acts of Parliament? But I ground my Opinion in this Case upon the Tenant having submitted to pay the Rent. He has held himself bound in Conscience to pay for the Use and Occupation of the Land the last Half-year. He paid it to the Defendant, which he was not bound in Law to do; and in such Case the Person he pays it to shall be accountable, and considered as receiving it for those who are in Equity entitled."—I am not aware of any Passages in our judicial Annals which appear to me more exceptionable than the first of those that have been just extracted. The Argument is, that because Courts of Equity, in their general Reasonings, are guided by the Analogy of the Common Law, they shall be admitted to assume an Authority to outrun the Legislature in the positive Alteration of the Law; and that, when a Remedy is applied by the Parliament to one or two particular Cases, the judicial Powers of the Country shall consider themselves privileged to apply a similar Remedy to other Cases which are subject to similar Inconvenience. A more striking Instance could not be given of the Mischief which results from harping upon an ambiguous Phrase, than the Use which is here made of the Maxim that *Equitas sequitur Legem.* In the fair Exposition of the Maxim, the Meaning of it is, that Equity acts by Analogy to the Common Law. In the Extension which is attempted to be given to it, the Position assumed is, that a Court of Equity follows the Example of the Legislature. The other Position, though not calling for my Animadversion upon the Attempt to grasp at an Excess of Jurisdiction, does not by any means appear to be founded upon accurate Reasoning. If the Tenant expressly paid the Money with a View to the Apportionment directed, it was perfectly right that such Apportionment should be actually made; but, being continued as Tenant on the Estate, he pays the Rent without any such apparent View. It was at the Option of the Remainder-man whether he should continue or be removed; and it is quite as natural to presume that the Payment was made in consideration of his being so permitted to remain, as with a View to the Distribution appointed by the Statute. And it should not be forgotten, that if the Tenant in Tail, who happened to make the Demise, had made such a Demise as would have been valid and subsisting against the Remainder-man, the Right of the Remainder-man to the whole Rent, according to the Reservation from the Commencement of his Title to the Possession of the Estate, would have been as clear and indisputable as any Right known to the Law.

In Vernon *v.* Vernon, 2 Bro. Ch. 659, the Question arose on a Demise from Year to Year by the Guardians of an Infant Tenant in Tail, and Lord Thurlow determined in Favour of the Apportionment. He said the Case of Paget *v.* Gee, seemed rather to be a Decision of what the Statute ought to have done than what it had done; but the Question here seems to turn on another Ground, that the Tenant holding from Year to Year, or from Period to Period, from a Guardian, without Lease or Covenant, cannot be allowed to raise an Implication in his own Favour that he should hold without paying any Rent to any Body. This Reasoning does not seem to be a great deal more satisfactory than that which has been last commented upon. The Tenant held by right or by wrong. It is not pretended that he held by wrong, and holding by right his Tenancy was according to his Contract, and subject to all its legal Incidents and Consequences. The Letting of the Land was for the Infant's Benefit; but although an Infant should be guarded from Prejudice, it is not requisite that he should have a Benefit, which, under similar Circumstances could not be claimed by an Adult, to the Prejudice of a third Person standing upon his legal Rights. The Counsel for the Infant's Representative cited a

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'thereon, whereby their Landlords or Lessors might be satisfied for the Rent-arrear, but also refusing to deliver up the Possession of the demised Premises, whereby the Landlords

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Case of Whitfield *v.* Pindar, in the Common Pleas, Hil. 1781, where the Tenant in Tail, Remainder to others in Tail, made a Lease, and died three Weeks after the Rent Day, and it was ruled that there should be an Apportionment (it is added, *though the Lease was void as against the Remainder-man*, as if there could be any Claim of Apportionment if it had not been so void). This is a Decision at Law upon the express Effect of the Statute, and stands upon much better Grounds than the Attempt in the Cases before alluded to, to apply the Principles of the Statute to Cases assumed not to be within the Operation of it. Whether the Expression, *Tenant for Life*, should be understood strictly and literally, or as applicable generally to all Persons whose Interest determines with their Life, was a fair Question of Construction; and I think that if it had still remained open to Discussion, the latter View of it was more correct, and more conformable to the apparent Intention of the Legislature.

In Hawkins *v.* Kelly, 8 Ves. 308, (which arose upon a Demurrer on account of the Matter being cognizable at Law) Lord Eldon, acting upon the Authority of Paget and Gee, held, that upon a Lease of the Glebe, Parsonage House, Tithes, &c. of a Rectory, the Tenant having paid the entire Rent to the Successor, the Executors of the deceased Rector were entitled to an Apportionment.

In Williams *v.* Powell, 10 East, 269, (which was admitted to be a Case not within the Statute) the Predecessor of the Defendant, as Rector, had compounded with the Occupiers of Lands for their Tithes: the Defendant had received the whole Amount of the Composition, and paid into Court sufficient to cover the Tithes which had accrued due in the Life-time of the deceased, which the Court held sufficient, not conceiving him liable in respect of an Apportionment of Time. The Reporter very reasonably observes, that it seems that if the Tithes in Kind for which the Composition was made would, supposing there had been no Composition, have been wholly due before the Death of the deceased Rector, his Representatives would have been legally and equitably entitled to the Whole, however they might be restrained by Agreement with the Parishioners not to demand Payment till the Day agreed upon, and the Successor could not be entitled to any Part of such Composition. In the subsequent Case of Ainsley *v.* Wadsworth, 2 V. and B. 331, the Successor having received the whole Year's Composition, the Vice-Chancellor decreed an Apportionment with Reference to the respective Periods of Enjoyment.

In Salter *v.* Champlin, 10 Ves. 66, the Question being whether Land-tax, Quit-rents, and other Charges which became due after the Death of Tenant for Life, should be sustained by the Remainder-man, or be apportioned? The Master of the Rolls said, the Statute 11 Geo. II. has no Application to this Case. It might be very reasonable to make such a Statute, as to the Apportionment of Taxes between the Tenant for Life and the Remainder-man, giving the Tenant for Life the Benefit only as against the Tenant under the Lease. —In a View of the Law of Apportionment, introduced into the Appendix to the Translation of Pothier, (p. 47) it occurred to me to observe that this Act stops short of its probable Object, in not including the Case of a Tenant for the Life of another Person, whose Estate determines by the Death of such other Person; and that if an Ecclesiastical Person makes a Lease, and vacates his Preferment by the Acceptance of another, I conceived that there could be no Apportionment. The Case of Tenant *pur autre vie* has been since incidentally noticed in the Case of Wykham *v.* Wykham, 3 Taunt. 331, in which, with Reference to some Observations of Counsel, Mansfield C. J. said—"Has it ever been determined that the Executor of a Tenant *pur autre vie* is entitled to recover a Portion of the Rent from the last Quarter-day under the Statute? He is certainly within the Mischief; for otherwise the Tenant of the Land may keep the Rent for his own Benefit." To use the Language of the Master of the Rolls, it might be very reasonable to make a Statute for the Purpose, but certainly the Language of the present Statute will not admit of such an Interpretation; and it would be much better, until there is another, to let the

'are put to the Expence and Delay of recovering in Ejectment;' Be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June* one thousand seven hundred and thirty-eight, if any Tenant holding any Lands, Tenements, or Hereditaments, at a Rack-rent, or where the Rent reserved shall be full three Fourths of the yearly Value of the demised Premisses, who shall be in Arrear for one Year's Rent, shall desert the demised Premisses, and leave the same uncultivated or unoccupied, so as no sufficient Distress can be had to countervail the Arrears of Rent; it shall and may be lawful to and for two or more Justices of the Peace of the County, Riding, Division, or Place (having no Interest in the demised Premisses) at the request of the Lessor or Landlord, Lessors or Landlords, or his, her, or their Bailiff or Receiver, to go upon and view the same, and to affix, or cause to be affixed, on the most notorious Part of the Premisses, Notice in Writing, what Day (at the Distance of fourteen Days at least) they will return to take a second View thereof: and if upon such second View the Tenant, or some Person on his or her Behalf, shall not appear, and pay the Rent in Arrear, or there shall not be sufficient Distress upon the Premisses; then the said Justices may put the Landlord or Landlords, Lessor or Lessors, into the Possession of the said demised Premisses; and the Lease thereof to such Tenant, as to any Demise therein contained only, shall from thenceforth become void.

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Provision for Landlords, where Tenants desert the Premisses.

XVII. Provided always, That such Proceedings of the said Justices shall be examinable in a summary Way by the next Justice or Justices of Assize of the respective Counties in which such Lands or Premisses lie; and if they lie in the City of *London* or County of *Middlesex*, by the Judges of the Courts

Tenants may appeal from the Justices.

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Inconvenience remain as it is, than to allow the Assumption of that judicial Legislation, of which it is more easy to check the Beginning, than to calculate the End.

In the Case of Earl Strafford *v.* Wentworth, Pre. Ch. 555, a Tenant for Life had made Leases, some of which, being under a Power, had Continuance after his Death; and others not being according to his Power, determined with his Life, and died on the Rent Day, about 12 o'Clock at Noon, and Lord Macclesfield held, that the latter belonged to his Executors, because, although for the Benefit of the Tenants, they had, to the last Instant of the Day, to pay the Rents; yet as soon as the Day began, they were at their Peril to take Care that they were paid accordingly; but as to the Lease made by virtue of the Power, they had Existence and Continuance after the Death of the Lessor, and thus the Rent went along with the Reversion, to those who were entitled to it. In Lord Rockingham *v.* Penrice, 1 P. Wms. 177, the Tenant for Life died before Sun-set, and it was held that the Person in Remainder was entitled to the Rents that became due that Day. One Tenant had paid his Rent to the Tenant for Life in the Morning, and it was held, that though this was a good Payment to discharge the Tenant, the Executors should account for it to the Party in Remainder. Upon this Point the Reporter makes a Query; for if the Payment was a good Payment at Law, as it certainly was, why must it not be so in Equity? A Case was cited before Tracey J. at Durham, where the Executor of a Grantee for Life of a Rent Charge, who died after Sun-set on the Day, was held entitled. See Duppa *v* Mayo, 1 Saund. 287, in which it was held, as between Heirs and Executors of Tenant in Fee, that where the Lessor died after Sun-set, and before Midnight, (the Rent not being previously paid) the Heir was entitled.

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of King's Bench or Common Pleas; and if in the Counties Palatine of *Chester*, *Lancaster*, or *Durham*, then before the Judges thereof; and if in *Wales*, then before the Courts of Grand-Sessions respectively; who are hereby respectively impowered to order Restitution to be made to such Tenant, together with his or her Expences and Costs, to be paid by the Lessor or Landlord, Lessors or Landlords, if they shall see Cause for the same; and in case they shall affirm the Act of the said Justices, to award Costs not exceeding five Pounds for the frivolous Appeal.

Tenants holding Premisses after the Time they notify for quitting them, to pay double Rent.

'XVIII. And whereas great Inconveniencies have happened and may happen to Landlords, whose Tenants have 'Power to determine their Leases, by giving Notice to quit the 'Premisses by them holden, and yet refusing to deliver up the 'Possession, when the Landlord hath agreed with another 'Tenant for the same;' Be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June* one thousand seven hundred and thirty-eight, in case any Tenant or Tenants shall give Notice (15.) of his, her, or their Intention to quit (16.) the Premisses by him, her, or them holden, at a Time mentioned in such Notice, and shall not accordingly deliver up the Possession thereof at the Time in such Notice contained; that then the said Tenant or Tenants, his, her, or their Executors or Administrators, shall from thenceforward pay to the Landlord or Landlords, Lessor or Lessors, double the Rent (17.) or Sum which he, she, or they should otherwise have paid; to be levied, (18.) sued for, and recovered at the same Time, and in the same Manner, as the single Rent or Sum before the giving such Notice could be levied, sued for, or recovered; and such double Rent or Sum shall continue to be paid, during all the Time such Tenant or Tenants shall continue in Possession as aforesaid.

2 W. & M. c. 5.

'XIX. And whereas it hath sometimes happened, that 'upon a Distress made for Rent justly due, the Directions of 'the Statute made in the second Year of the Reign of King '*William* and Queen *Mary*, intituled, "An Act for enabling 'the Sale of Goods distrained for Rent in case the Rent be not 'paid within a reasonable Time," have not been strictly pur'sued, but through Mistake or Inadvertency of the Landlord 'or other Person intitled to such Rent and distraining for 'the same, or of the Bailiff or Agent of such Landlord 'or other Person, some Irregularity or tortious Act hath been 'afterwards done in the Disposition of the Distress so seized or 'taken, as aforesaid; for which Irregularity or tortious Act the 'Party distraining hath been deemed a Trespasser *ab initio*,

(15.) The Notice need not be in Writing; Timmins *v.* Rowlinson, 3 Bur 1603.

(16.) A Notice that the Tenant will quit as soon as he can get another Situation does not bring a Case within the Statute; Farrance *v.* Elkington, 2 Camp 591.

(17.) This differs from 4 George II. which subjects the Tenant to double the yearly Value, in case the Notice is given by the Landlord.

(18.) By Distress; Timmins *v.* Rowlinson, 3 Bur. 1603.

'and in an Action brought against him as such the Plaintiff 'hath been intitled to recover, and has actually recovered, the 'full Value of the Rent, for which such Distress was taken: 'And whereas it is a very great Hardship upon Landlords and 'other Persons intitled to Rents, that a Distress duly made 'should be thus in Effect avoided for any subsequent Irregu-'larity;' Be it enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June* in the Year of our Lord one thousand seven hundred and thirty-eight, where any Distress shall be made for any Kind of Rent justly due, and any Irregularity or unlawful Act shall be afterwards done by the Party or Parties distraining, or by his, her, or their Agents; the Distress itself shall not be deemed to be unlawful, nor the Party or Parties making it be therefore deemed a Trespasser or Trespassers *ab initio*;(19.) but the Party or Parties aggrieved by such unlawful Act or Irregularity shall or may recover full Satisfaction for the special Damage he, she, or they shall have sustained thereby, and no more, in any Action or Trespass, or (20.) on the Case at the Election of the Plaintiff or Plaintiffs: Provided always, That where the Plaintiff or Plaintiffs shall recover in such Action, he, she, or they shall be paid his, her, or their full Costs of Suit, and have all the like Remedies for the same as in other Cases of Costs.

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Distresses for Rent not unlawful, &c. for any Irregularity in the Disposition of them.

XX. Provided nevertheless, That no Tenant or Tenants, Lessee or Lessees, shall recover in any Action for any such unlawful Act or Irregularity as aforesaid, if Tender of Amends hath been made by the Party or Parties distraining, his, her, or their Agent or Agents, before such Action brought.

nor Tenants to recover by Action, on Tender of Amends.

XXI. And be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June* one thousand seven hundred and thirty-eight, in all Actions of Trespass or upon the Case to be brought against any Person or Persons intitled to Rents or Services of any Kind, his, her, or

In Actions against Persons intitled to Rents, and De-

(19.) Trespass may be maintained where the Defendant expels the Plaintiff from the Premises and keeps Possession after the Rent paid; Etherton v. Popplewell, 1 East, 139. So where the Defendants continued in Possession eleven Days before they began to remove the Goods, and were then employed four Days in removing them; but whether the Action was sustainable for the mere Continuance, or on account of the taking and removing of the Goods from the Premises, and disturbing the Plaintiff's Possession after the Time when they ought to be removed, was not agreed Lord Ellenborough and Grose J ruled the Case on this latter Ground, as distinguished from the former. Le Blanc J., assented to the Action being maintainable on that Ground, but said he did not wish to be precluded from saying in a subsequent Case, that a Party might be a Trespasser by continuing on the Premises wrongfully. Bayley J held, that Trespass for the wrongful Continuance was the proper Remedy, and that the other Ground could not be supported Winterbourne v Morgan, 11 East, 395.

For an Irregularity in the subsequent Disposition (as in selling without proper Appraisement) Trover cannot be maintained since the Statute, as it tends to place the Landlord in the same Situation as before, by considering him a Trespasser *ab initio*, Wallace v King, 1 H B. 13.

(20.) Lord Ellenborough did not consider this as giving the Plaintiff an Option which Remedy to pursue, in every Case of an unlawful Act or Irregularity, but merely an Option according to the subject Matter of the Grievance, Winterbourne v. Morgan, ub. supra.

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Defendants may plead the General Issue, &c.

their Bailiff or Receiver, or other Person or Persons, relating to any Entry by virtue of this Act, or otherwise, upon the Premisses chargeable with such Rents or Services, or to any Distress or Seizure, Sale or Disposal of any Goods or Chattels thereupon, it shall and may be lawful to and for the Defendant or Defendants in such Actions to plead the General Issue, and give the Special Matter in Evidence, any Law or Usage to the contrary notwithstanding And in case the Plaintiff or Plaintiffs in such Action shall become nonsuit, discontinue his, her, or their Action, or have Judgment against him, her, or them, the Defendant or Defendants shall recover Double Costs (21) of Suit.

Defendants in Replevin to avow, &c that the Plaintiff held the Premisses at a certain Rent, &c.

'XXII. And whereas great Difficulties often arise in making Avowries or Conuzance upon Distresses for Rent, Quit-Rents, Reliefs, Heriots, and other Services;' Be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June* one thousand seven hundred and thirty-eight, it shall and may be lawful to and for all Defendants in Replevin to avow or make Conuzance generally,(22) that the Plaintiff in Replevin, or other Tenant of the Lands and Tenements whereon such Distress was made, enjoyed the same under a Grant or Demise (23.) at such a certain Rent (24) during the Time wherein the Rent distrained for incurred, which Rent was then and still remains due; or that the Place where the Distress was taken was Parcel of such certain Tenements, held of such Honour, Lordship, or Manor, for which Tenements the Rent, Relief, Heriot, or other Service distrained for, (25) was at the Time of such Distress and still remains due, without further setting forth the Grant, Tenure, Demise, or Title, of such Landlord or Landlords, Lessor or Lessors, Owner or Owners of such Manor; any Law or Usage to the contrary notwithstanding: And if the Plaintiff or Plaintiffs in such Action shall become nonsuit, discontinue his, her, or their Action, or have Judgment given against him, her or them, the

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(21) It is not necessary that there should be either a Certificate from a Judge, or a Suggestion on the Roll, in order to intitle a Defendant to double Costs on this Act Finlay v Seaton, 1 Taunt 210

(22) The Defendant cannot plead generally *De injuria propria* in bar of such Avowry, Jones v Kitchen, 1 B and P, 70

(23) The Act does not extend to an Avowry for a Rent Charge, Bulpit v Clarke, 1 N R 56, or to a Rent under a Canal Act, in Satisfaction for Damages, and charged on the Rates, but only to the Rent directly reserved by a Landlord on his Grant, on Demise of Land theretofore made; Leominster Canal v Cowell, 1 B and P 213

(24) An Avowry for Rent of £—— and an increased Rent of £—— for every Acre converted into Tillage is supported by a Demise for 21 Years, with a Reservation of the advanced Rent during the last three Years, and for which advanced Rent during those three Years the Distress was made It was objected that the Avowry ought either to have been general under the Statute, or special as at Common Law, whereby the Avowant was bound to an exact Statement of his Title in *omnibus*, and that in the present Case it was neither, Roulston v Clarke, 2 H B 593

(25) If a less Rent was due than is avowed for, the Avowant may recover for so much as is due, Harrison v. Barnby, 5 T. R. 248, Forty v. Imber, 6 East, 434.

Defendant or Defendants in such Replevin shall recover double Costs of Suit. (26.) No. 23. 11 George II. c. 19.

XXIII. And to prevent vexatious Replevins of Distresses taken for Rent, Be it enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June* one thousand seven hundred and thirty-eight, all Sheriffs, and other Officers having Authority to grant Replevins, may and shall in every Replevin of a Distress for Rent, take in their own Names, from the Plaintiff, and two responsible (27) Persons as Sureties, a Bond in double the Value of the Goods distrained (28) (such Value to be ascertained by the Oath of one or more credible Witness or Witnesses not interested in the Goods or Distress, which Oath the Person granting such Replevin is hereby authorized and required to administer), and conditioned for prosecuting the Suit (29.) with Effect and without Delay, and for duly returning the Goods and Chattels distrained in case a Return shall be awarded, before any Deliverance be made of the Distress; and that such Sheriff, or other Officer as aforesaid, taking any such Bond, shall at the Request and Costs of the Avowant, or Person making Conuzance, assign such Bond to the Avowant or Person aforesaid, (30) by indorsing the same,

To prevent vexatious Replevins.

Replevin Bonds may be assigned.

(26) In an Avowry for Distress, Damage Feasant, it is still necessary to set out the Person's Title in Pleading. In Scilly *v.* Dally, 2 Salk. 562, Holt C. J. called this an established Rule in Pleading, which was not to be broken upon fancied Inconveniences. A Practice had begun to prevail of avowing generally that the Defendant was *lawfully possessed* of the locus in quo. Such Pleas have been ruled to be bad in Hawkins *v.* Eckles, 2 B. and P. 359, of which Serjt. Williams observes, in N. to 2 Saund. 284, that the Court of Common Pleas it was hoped had thereby put an effectual Stop to such an Innovation. The Judgment of the Case was evidently correct and conformable to the established Rules of Pleading; but I am far from joining the learned Serjeant in his Hopes, if intended to apply to a legislative Provision upon the Subject, for it certainly is no fancied Inconvenience that a Person in the peaceable Possession of Land, and having in respect of such Possession an undisputed Right of maintaining an Action of Trespass, should be subjected to the Inconvenience of a precise Statement of his Title, in order to avail himself of his legal Remedy against an acknowledged Wrong-doer.

(27.) The Sheriff is accountable for the Sufficiency of the Sureties in such Bond, as also for the Sufficiency of the Pledges under Stat. West. 2. C. 2. ante No. 6. And an Action on the Case may be maintained for the Insufficiency of such Sureties or Pledges; B. N. P. 60. In such Action the Sheriff is only liable to the Amount for which the Sureties would have been liable if sufficient; Yea *v.* Lethbridge, 4 T. R. 433; Evans *v.* Brander, 2. H. B. 547; which latter Case overrules Concannen *v.* Lethbridge id. 36; whereby it was held that the Damages might exceed the Penalty of the Bond and cover the Rent and Expenses. The Action ought to be brought by the Person making Cognizance if there is no Avowant on the Record; Page *v.* Eamer, 1 B. and P. 378. The Court will not, on Motion, order the Officer to pay the Costs of the Replevin; Tesseyman *v.* Gildart, 1 N. R. 292.

(28) The two Sureties are only liable to the Amount of the Penalty in the Bond and Costs of Suit against themselves; Hefford *v.* Alger, 1 Taunt. 218.

(29.) If the Plaint be removed by *Re: Fa: Lo:* the Condition extends to prosecuting the Suit with Effect in the superior Court.

(30) In Dias, Assignee, *v.* Freeman, 5 T. R. 191, the Breach was for not appearing at the County Court, and upon Demurrer it was insisted that the Assignment could only be made to the Avowant, or Person making Cognizance; but it was ruled that the Plaintiff was entitled to an Assignment as a

No. 23. 11 George II. c. 19. and attesting it under his Hand and Seal in the Presence of two or more credible Witnesses; which may be done without any Stamp, provided the Assignment so indorsed be duly stamped before any Action brought thereupon; and if the Bond so taken and assigned be forfeited, the Avowant, or Person making Conuzance, may bring an Action, and recover thereupon in his own Name; (31.) and the Court where such Action shall be brought, (32) may by a Rule of the same Court give such Relief to the Parties upon such Bond, as may be agreeable to Justice and Reason; and such Rule shall have the Nature and Effect of a Defeazance to such Bond.

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Person who would have made Cognizance but for the Neglect of the Defendant. The Assignment may be to the Avowant only, without joining the Person making Cognizance, Archer v Dudley, 1 B and P 381 n

(31) The Action on the Bond may be in a superior Court, although the Suit was never removed out of the County Court It was observed that the Words were the same as those in 4 Anne, c 16, for assigning Bail Bonds, upon which the Action must be brought in the same Court as the Action in which the Bond was taken, Dias v Freeman, 5 T. R. 195.

(32) See Wilan v Hobday, 4 M & S. 120.